

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

NATIONAL ASSOCIATION FOR)
GUN RIGHTS, INC., et al.,)
Plaintiffs,) CASE NO. 4:23-CV-00830-O
VS.) FORT WORTH, TEXAS
MERRICK GARLAND, et al.,)
Defendants.) OCTOBER 2, 2023

VOLUME 1 OF 1
TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE REED C. O'CONNOR
UNITED STATES DISTRICT COURT JUDGE

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E X H I B I T S

PLAINTIFFS' EXHIBITS -

A - Video.....29
B - Video.....31
C - Video.....29

DEFENDANTS' EXHIBITS -

1 - CV of Anthony Ciravolo.....52
2 - Transcript.....58
3 - Cutaway Guns.....77

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I N D E X

PLAINTIFFS' WITNESSES:

DANIEL O'KELLY -

Direct Examination by Mr. Columbo.....06

Cross-Examination by Mr. Clendenen.....31

Redirect Examination by Mr. Columbo.....44

Rebuttal Examination by Mr. Columbo.....117

Surrebuttal Examination by Mr. Clendenen.....127

DEFENDANTS' WITNESSES -

ANTHONY CIRAVOLO -

Direct Examination by Mr. Resar.....46

Cross-Examination by Mr. Columbo.....99

Redirect Examination by Mr. Resar.....115

Reporter's Certificate.....146

Word Index.....147

P R O C E E D I N G S

OCTOBER 2, 2023

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THE COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated. We are here in Case
No. 4:23-CV-00830.

Who is here for the plaintiffs?

MR. COLUMBO: Good morning, your Honor. Michael
Columbo on behalf of plaintiffs.

THE COURT: Okay. Thank you, Mr. Columbo.

And for the defendants?

MR. RESAR: Good morning, your Honor, Alex Resar
on behalf of the defendants.

MS. BAKST: Laura Bakst on behalf of the
defendants, your Honor.

MR. CLENDENEN: And Mike Clendenden on behalf of
the defendants.

THE COURT: All right. Very good.

MR. COLUMBO: Your Honor.

THE COURT: Yes.

MR. COLUMBO: I also have with me my colleagues
David Warrington, Mr. Ben Sley, as well, and Gary Lawkowski.

THE COURT: Very good. Thank you all for being
here.

MR. WARRINGTON: Good morning, your Honor.

1 THE COURT: Are you ready to call your witness?

2 MR. COLUMBO: Your Honor, would the Court
3 entertain brief opening remarks?

4 THE COURT: Let's just get right to the evidence.

5 MR. COLUMBO: Okay. Got you.

6 MR. CLENDENEN: Your Honor, before we begin, the
7 defendants would like to just preserve an objection that,
8 since this is an APA case, the Court's decision should be
9 limited to the administrative record before the agency,
10 rather than outside expert testimony.

11 THE COURT: Okay. Thank you.

12 MR. CLENDENEN: Thank you, your Honor.

13 MR. COLUMBO: Your Honor, it's our position that
14 this is not an APA case.

15 THE COURT: Okay. Very good. Let's go ahead and
16 put the witnesses on.

17 MR. COLUMBO: Your Honor, the plaintiffs call
18 Mr. Dan O'Kelly, and intend to qualify him as an expert.

19 THE COURT: Very good. Thank you.

20 Would you raise your hand to be sworn, please?

21 THE WITNESS: I do, sir.

22 THE COURT: Very good. Have a seat.

23 DIRECT EXAMINATION

24 (BY MR. COLUMBO:)

25 Q. Mr. O'Kelly, where are you employed?

1 A. With the International Firearms Specialist
2 Academy.

3 Q. And what is your position there?

4 A. I'm the director and founder.

5 Q. And what is the International Firearms Specialist
6 Academy?

7 A. It's a guild of experts that serves to raise the
8 bar of firearm knowledge for the legal profession, law
9 enforcement, firearm industry, and the general public, sir.

10 Q. And what do you do there as the director and
11 founder?

12 A. I direct training, develop training, and serve as
13 a consultant.

14 Q. Do you offer any training programs?

15 A. We do.

16 Q. And what's the content of those training programs?

17 A. Well, our training program consists of 14 modules,
18 different aspects of firearms and ammunition training. So
19 that's available as live seminars which we teach from coast
20 to coast. We've done so for 12 years. And we offer it
21 available as an online training course.

22 Q. And who are the people that you train?

23 A. We've had thousands of police officers on every
24 level. We've had hundreds of federal agents. We've had
25 attorneys, doctors, licensed gun dealers, importers,

1 collectors, and manufacturers, and just members of the
2 general public.

3 Q. What are some of the federal agencies whose agents
4 you've trained?

5 A. We've trained a couple of hundred FBI agents.
6 We've contracted with the FBI eight times to teach groups of
7 their agents. Once with the United States Marshals office,
8 Marshals service, sorry. And once with Homeland Security,
9 and once with Immigration and Customs Enforcement.

10 Q. What did you do before this -- before the academy?

11 A. I was, for two years, a corporate ATF compliance
12 agent or officer -- for Cabela's, Incorporated. It was the
13 largest licensed gun dealer in the United States.

14 Q. And before that?

15 A. I was an agent for the Bureau of Alcohol, Tobacco,
16 and Firearms for 23 years.

17 Q. And before the ATF?

18 A. I was a police officer for 11 years.

19 Q. When you were with the ATF, what positions did you
20 hold?

21 A. Well, I was an agent the entire time, but I
22 started in the Chicago Field Division, spent seven years as
23 a street agent doing mostly undercover investigations.

24 I then transferred to ATF's national academy,
25 became a staff member. And while on staff there, I was the

1 head firearms technology instructor, spent five and a half
2 years on staff.

3 During that time, I also spent two years running
4 ATF's undercover program, was their chief range instructor,
5 and was an instructor in several other topics.

6 Q. And as a special agent, did part of your duties
7 involve trying to identify whether a gun was a machinegun?

8 A. Yes. As a matter of fact, I didn't finish
9 answering your last question about my duties in ATF. I
10 mean, after my tenure at the academy, I then went to the
11 Tampa Field Division and did my last 11 years as an agent in
12 what's called the Firearms Instructor Coordinator. I was in
13 charge of the firearms instructors for the Tampa Field
14 Division, which covered the northern two-thirds of the
15 state.

16 Q. And just to circle back. So did part of your
17 duties as an agent involve identifying whether a gun was a
18 machinegun?

19 A. Yes, it did.

20 Q. Did you ever teach at academies abroad?

21 A. Yes. I taught several times each at the
22 International Law Enforcement Academy in Budapest, Hungary,
23 and Gaborone, Botswana in Africa.

24 Q. Do you know the difference between machinegun and
25 non-machinegun?

1 A. Certainly.

2 Q. How did you learn to identify whether something is
3 or is not a machinegun?

4 A. Well, in basic training we were taught the
5 statutory definition. I was one of the most qualified
6 firearm-knowledgeable people in ATF, taking nothing away
7 from anybody else, I'm just saying I was very firearm
8 knowledgeable when I came aboard ATF, because firearm
9 history and design has been my lifelong interest.

10 I went to any school that I could get into along
11 the way, both privately and, you know, if ATF would send me
12 or police departments sent me.

13 So, in addition to having learned the statutory
14 definition of a machinegun, I was very familiar with
15 firearms, having successfully completed 15 different armorer
16 schools at some point.

17 And so I was sort of the go-to guy for the agents
18 that I worked with. And when we served a search warrant, or
19 in any other capacity they would encounter things they were
20 unfamiliar with, and they would come to me and I would
21 explain, give some guidance on whether the thing satisfied
22 the definition of a machinegun or not.

23 Q. And you mentioned going to 15 schools. What is an
24 armorer school?

25 A. Well, armorer school is a class put on by a

1 firearm manufacturer, or other authority, where they teach
2 you how to work on their brand of firearms or some models
3 that they produce.

4 So, whether it's put on by Colt, just to learn the
5 AR-15, or whether it's put on by some other company to teach
6 you all of their models.

7 Q. And did you attend the Colt training on the AR-15?

8 A. I did.

9 Q. And did that teach you about the operation and the
10 components of an AR-15?

11 A. Of course.

12 Q. So you mentioned earlier that you had learned the
13 statutory definition of a machinegun, when you were an agent
14 did you use that definition to determine whether a gun was a
15 machinegun?

16 A. Yes, sir, definitely.

17 Q. How does one go about, in your work, using that
18 definition to make that determination?

19 A. Well, the definition has several elements. It has
20 qualifying phrases in it. You know, it says anything which
21 shoots more than one shot automatically without manually
22 reloading by a single function of the trigger. So those are
23 your elements.

24 Whatever the gun in question is, you look at its
25 features and consider the way it operates, what it actually

1 does step by step, because every gun, no matter what type or
2 what design it is, even if it's a revolver, even if it's not
3 semiautomatic, there's a cycle of operation that occurs
4 between each two shots fired.

5 And so, you take into consideration that cycle of
6 operation, those eight steps, and that shows you clearly
7 whether or not the item is a machinegun.

8 Q. Given your extensive training and experience when
9 you were at the ATF, were you treated by the agency and your
10 colleagues as an expert?

11 A. Yes. I was designated to cowrite the lesson plans
12 that are taught still today at the academy in 1998. Five
13 other agents and myself were designated to rewrite all of
14 the lesson plans for the firearm technology curriculum.

15 Q. And did that lesson plan include how to identify a
16 machinegun?

17 A. Yes.

18 Q. And who were the people that were taught by using
19 that lesson plan?

20 A. Anyone who is employed by ATF who needs to be
21 taught firearm technology, whether it's agents, industry
22 operations, investigators, firearm enforcement agents,
23 explosives handlers, I forget their title, but just anyone
24 who that training applies to. It's set through the basic
25 training at the national academy.

1 Q. In addition to those armorer schools, do you hold
2 any other certifications related to firearms?

3 A. I'm a range instructor. I've been a range
4 instructor certified by the Indiana Law Enforcement Academy
5 since 1980 and by the Federal Law Enforcement Training
6 Center since 1990.

7 Q. And to be specific, does your training and
8 experience include familiarity with the operation of an
9 AR-15?

10 A. Yes, it does.

11 Q. As well as an M16?

12 A. Yes.

13 Q. Have you ever invented and patented a firearm?

14 A. Yes, I have.

15 Q. And can you tell me, have you ever been qualified
16 as an expert in any court?

17 A. Yes. I was first deemed to be an expert in a U.S.
18 District Court in 1990 and countless times since then in
19 state and federal court.

20 Q. Would you say you have testified as an expert over
21 100 times?

22 A. Easily.

23 Q. Did you testify about classification of guns as
24 machineguns?

25 A. Yes.

1 Q. And in all those times that you've testified as an
2 expert, has a court ever excluded you from testifying?

3 A. No.

4 MR. COLUMBO: Your Honor, I move to admit
5 Mr. O'Kelly as an expert with special knowledge on the
6 classification of machineguns, firearms technology, and ATF
7 practices generally.

8 THE COURT: Yes.

9 (BY MR. COLUMBO:)

10 Q. Mr. O'Kelly, can you describe for me what is a
11 semiautomatic gun?

12 A. Well, there's a category of firearms called
13 self-loading firearms. That is, any firearm that reloads
14 its own chamber after firing the first cartridge, the second
15 cartridge, and every cartridge after that is self-loaded
16 into the chamber by using the power generated by that first
17 fired cartridge.

18 Of course, no gun loads its own chamber the first
19 time. The shooter has to do that. But once you've
20 chambered that first cartridge and fired it, any firearm
21 that uses either the gas produced by that first fired
22 firearm or the inertia produced by that first -- I'm sorry,
23 that first fired cartridge -- is used to reload the chamber,
24 that's self-loading.

25 Of self-loading firearms, semiautomatic is any one

1 which fires one shot per function of the trigger. The
2 remaining ones are machineguns, any one that fires more than
3 one shot by a single function of the trigger.

4 Q. And just to be clear, a semiautomatic gun that
5 does all that you just described, self-loading, and firing
6 with a single function of the trigger, that is not a
7 machinegun?

8 A. Correct.

9 Q. And that includes the AR-15?

10 A. Correct.

11 Q. Okay. Can you describe for us by comparison what
12 is a machinegun?

13 A. Well, a machinegun is any self-loading firearm
14 that fires -- actually, it's not even limited to
15 self-loading firearms -- but any gun which fires more than
16 one shot by a single function of the trigger.

17 Q. And generally, what is the function of a gun's
18 trigger?

19 A. It is to release the hammer in an AR-15. In some
20 guns it's to release the bolt or in other guns it's to
21 release the striker. In an AR-15, its job is to release the
22 hammer, which is in a cocked position, under spring
23 pressure.

24 Q. And can you tell us generally what is an AR-15?

25 A. It comes in rifle, pistol, or shotgun form, and

1 it's a semiautomatic. Generally, a rifle. It's found in
2 rifle configuration. It was invented in the 1950s by a man
3 named Stoner. It was adopted by the U.S. military in the
4 early '60s. It's still in use today by the U.S. military.
5 Generally called the M4.

6 And it's been produced by hundreds of commercial
7 enterprises for the civilian market. Those companies will
8 give it different names: The ST15, M15, R15, what have you.
9 There's no law that restricts what you call it.

10 The point is, they're all made based on the
11 original blueprints. The parts are interchangeable. Most
12 of the differences between them are cosmetic in nature, or
13 caliber, barrel length, things like that. But that's what
14 we're referring to when we say AR-15, it's a general name.

15 Q. Is there a commonly known name for a machinegun
16 counterpart to the semiautomatic AR-15?

17 A. Generally, we say M16. They can go by different
18 names. The M4 that the military uses today is fully
19 automatic, most of them are anyway. But again, there's no
20 law. We say M16 when we mean machinegun version of the
21 AR-15.

22 Q. Mr. O'Kelly, on the screen is a picture marked as
23 Exhibit A that's actually the first frame of a video.

24 What is Exhibit A a picture of, do you recognize
25 it?

1 A. Yes. This is an x-ray or cutaway diagram of the
2 internal firing components of an AR-15.

3 Q. Do you have a pointer with you by chance?

4 A. I do. Doesn't seem to be -- let me put on my
5 glasses and turn it on, please.

6 Q. I'm not sure we're all looking at the same screen
7 anyway. We may have to just do this verbally.

8 So in this picture, can you identify which part is
9 the trigger?

10 A. The trigger is the dark blue part you see toward
11 the bottom.

12 Q. Okay. And you testified that the function of a
13 trigger is to release the hammer. What causes a trigger to
14 release the hammer?

15 A. If you look at the forward end of the trigger at
16 the top, I assume the Court can see what I'm pointing at at
17 least, there's an engagement right here (indicating) where
18 the top front corner of the trigger is engaged into a notch
19 at the bottom of the hammer. So the hammer being under
20 spring pressure, that engagement is holding the hammer in
21 the cocked position.

22 Q. And what causes the trigger to move rearward?

23 A. Once the shooter applies rearward pressure to the
24 visible part of the trigger, the trigger is going to pivot
25 down, pivoting on this axle pin you see here in white, and

1 that's going to break this engagement between the trigger
2 and the hammer. The trigger is then not restricted, and it
3 moves forward under spring pressure.

4 Q. And you have the control for the video now, don't
5 you?

6 A. Yes.

7 Q. Okay. So let's play the video and pause it as you
8 wish to explain what we're seeing as the trigger functions.

9 A. As the trigger moves rearward -- okay. It doesn't
10 seem to be starting.

11 Q. Maybe you are too far.

12 A. There we go.

13 Okay. I've stopped it. You see that the trigger
14 pivoted downward, released that engagement that was here,
15 the hammer pivots forward, is about to strike the firing pin
16 and fire the cartridge, which is up here in the chamber.

17 At that point, the bolt carrier, the aqua-colored
18 long part at the top, is moving rearward and it's serving to
19 recock the hammer, push it back down into that cocked
20 position.

21 When it reaches the fully cocked position, we are
22 going to see an engagement between this hook on the hammer
23 and this hook on the green part. This green part is called
24 a disconnecter, and you will see them engage the whole
25 hammer in a cocked position.

1 So now the hammer is being held in the cocked
2 position here by the disconnecter. The trigger is still in
3 the rearward position. It's still being held back by the
4 shooter. And that is why the disconnecter is here, because
5 the trigger, at this point, cannot reengage with the hammer
6 at the forward end where it originally was.

7 But at some point the shooter is going to release
8 the trigger with his finger, the trigger will then hinge
9 back forward, or pivot back forward and level out, and then
10 there will be a tradeoff. The disconnecter will release the
11 hammer here at the top and re- -- the trigger will reengage
12 with the hammer here at the bottom. So I will move the
13 video forward and you will see that tradeoff.

14 (The DVD/audio was played.)

15 THE WITNESS: And there you see the disconnecter
16 has now released, but the trigger has captured the hammer
17 and it's holding in its original position where we were to
18 begin with.

19 At this point, the bolt carrier is moving forward
20 under spring pressure to rechamber a new live cartridge and
21 wait for further action by the shooter.

22 Q. So what do we mean when we say the resetting of
23 the trigger or the trigger resets?

24 A. That's just referring to the reengagement between
25 the trigger and the hammer.

1 Q. And that's the moment we are looking at right now?

2 A. Yes.

3 Q. Okay. What causes or what would cause the hammer
4 to be released again to fire a subsequent shot?

5 A. The only thing that can occur to cause that is
6 another rearward movement by the finger on the trigger
7 enough that it pivots the trigger down and breaks this
8 engagement that we've referred to at the bottom of the
9 hammer.

10 Q. Okay. And what we've just described is the
11 function of an AR-15 trigger, right?

12 A. That is the function of the trigger to release the
13 hammer.

14 Q. I mean, the video we just watched was an AR-15?

15 A. Yes.

16 Q. Okay. So now I would like to get into a
17 discussion of the FRT-15, which is the subject of this case.
18 Are you familiar with this device?

19 A. Yes.

20 Q. How are you familiar with this device?

21 A. Approximately two years ago I was called by the
22 owner of the company and asked if I would take a look at it,
23 testify or examine it and render an opinion as to what it
24 qualifies to as within the law.

25 Q. You are talking about the owner of the

1 manufacturer?

2 A. Yes. The owner of the FRT-15, the Rare Breed
3 Triggers Company.

4 Q. Did you reach an opinion?

5 A. I did.

6 Q. How did you reach that opinion?

7 A. I traveled to his location, examined the trigger
8 that was outside of the gun, examined the firearm, which had
9 one of the triggers installed on it, test fired it, looked
10 at diagrams and videos, familiarized myself with the way it
11 operates.

12 Q. And what would you reach as a conclusion?

13 A. That it is not a machinegun. Absolutely not.

14 Q. Is it a semiautomatic automatic trigger?

15 A. It is just that.

16 Q. How does an FRT-15 differ from the semiautomatic
17 AR-15 trigger that you just discussed for us?

18 A. The absolute only difference between the two is
19 that the trigger is reset, forced into a reset position, in
20 a regular AR-15 by a spring. And in the FRT it's forced
21 into the reset position by the hammer.

22 All AR-15s are forced reset triggers. In a
23 standard AR-15, it's a spring that forces the trigger to
24 reengage with the hammer. Whereas, in the FRT-15, the
25 hammer pushes down on the trigger and forces it to pivot

1 back forward into that original position.

2 Q. So in both an FRT-15 and the traditional AR-15,
3 what needs to happen for the trigger to move rearward enough
4 to release the hammer?

5 A. The shooter has to make another rearward pull of
6 the trigger enough distance that it disengages from the
7 hammer.

8 Q. In both devices, does the trigger need to reset in
9 between each shot?

10 A. It has to. Mechanical necessity for it to
11 operate.

12 Q. Because it's necessary to reset to reengage with
13 the hammer?

14 A. Yes.

15 Q. Can either an FRT-15 or a traditional AR-15
16 trigger fire a second shot without first resetting?

17 A. No.

18 Q. Let's go to Exhibit A to the point where the
19 FRT-15 video is again. Okay. Leave it paused at the
20 beginning for a moment.

21 Okay. So, Mr. O'Kelly, you were describing to us
22 the FRT-15's function. Do you recognize what is on the
23 screen right now, which is still within Exhibit A?

24 A. Yes. This is the same type of diagram, only with
25 an FRT-15 type trigger, rather than the conventional

1 original AR-type trigger.

2 Q. Using the same process, since you have control of
3 the video, can you please take us through the video and show
4 us and describe for us what we are seeing about the function
5 of the trigger in an FRT-15?

6 A. Sure. You can see an engagement between the
7 forward end of the trigger and the bottom notch in the
8 hammer. Well, it started without me pushing the button. So
9 we will try to get it to reset and start over. Let's wait
10 for it to go through and reach the beginning again.

11 We see the engagement between trigger and hammer.
12 The same as in the other video. When the shooter pulls
13 rearward on the visible part of the trigger, that's going to
14 pivot the trigger down just like before.

15 That's going to disengage these two notches just
16 like before. And the hammer is again going to pivot forward
17 under spring pressure, strike the firing pin, the bolt
18 carrier will move rearward.

19 So I will wait until we get to that point and stop
20 the video. At this point, the bolt carrier has forced, you
21 see it bearing on this top point of the hammer. It has
22 pushed it into a full recocked position.

23 You see the hammer also bearing down on this load
24 on the trigger and pushing down, which pivots the trigger
25 back to its original position and causes reengagement here

1 at the front.

2 At the same time, this green piece, which is
3 called a locking bar, it's under spring pressure. As soon
4 as the trigger has reached reset with the hammer, the
5 locking bar jumps into a notch at the top of the trigger.
6 And that makes it physically impossible for the trigger to
7 be pulled rearward again and release the hammer until later
8 in this cycle. So it's a locked steel-on-steel position.

9 So moving forward again a little bit in the video.
10 There we see the locking bar has engaged with the trigger.
11 The trigger is a full forward position and cannot move
12 rearward again. At this point, the bolt carrier is, again,
13 moving forward to rechamber the cartridge.

14 Once it goes completely forward and locks into a
15 position called in battery, where the gun is safe to shoot
16 again. Right at that same time, instantaneously, a load at
17 the rear of the bolt carrier, which we see over here, is
18 going to contact this locking bar and pivot it out of
19 position with the trigger.

20 It's not going to move the trigger. Nothing moves
21 the trigger but the shooter's finger, when and if they want
22 to. But once the locking bar becomes disengaged with the
23 trigger, then and only then can the shooter, if he wants to,
24 again, pull the trigger and fire another shot.

25 So we see the bolt carrier moving forward. We see

1 the bolt carrier now having moved the locking bar out of
2 engagement with the trigger, allowing the trigger to be
3 pulled again and fire another shot.

4 Of course, the video is in a repeating mode as
5 though there's a shooter's finger there continuing to do so.

6 Q. Just to put a fine point on that. We just saw the
7 trigger move and the only thing that would make the trigger
8 move rearward again to fire a second shot is force applied
9 by the user?

10 A. Yes. The shooter has to, again, pull rearward and
11 move the trigger to the point of releasing the hammer. That
12 has to be done once for each shot fired.

13 Q. Does the trigger need to function, as you've just
14 described, and as the video has just shown, for every shot
15 that is fired by the FRT-15?

16 A. It certainly does.

17 Q. And in between each shot, the trigger needs to
18 reset and retain the hammer again?

19 A. Yes, it does.

20 Q. Does the fact that an FRT-15 fires fast have
21 anything to do with whether it's a machinegun?

22 A. No, that's the whole rub here. It does all of
23 this. This one cycle of one shot fired, these eight steps
24 of the cycle operation, firing and locking, cocking,
25 extraction, ejection, feeding, chambering, locking, those

1 all happen within the blink of an eye.

2 So this cycle can be repeated very quickly. And
3 that's the rub. The government doesn't like this because it
4 allows you to shoot very quickly.

5 But for every shot fired, the shooter is pulling
6 the trigger to the rear, to the point of making it disengage
7 with the hammer, fire a shot, the trigger is then forced to
8 reengage with the hammer and wait for the cycle to complete.

9 And then and only then can the shooter again pull
10 the trigger and start the cycle over again, if he chooses
11 to. If the shooter releases pressure from the trigger, it
12 stops.

13 Q. Are there other devices, on the market that are
14 approved by the ATF that enable an AR-15 to fire as fast as
15 an FRT-15 does?

16 A. Certainly.

17 Q. What are those devices just as some examples?

18 A. Well, one is called the binary trigger by Franklin
19 Armory. Every time you pull the trigger to the rear, it
20 fires a shot. And when you release the trigger, it fires
21 another shot. ATF is fine with that.

22 There's one called the 3MR trigger by a company
23 called Tac-Con. It's a forced reset trigger very similar to
24 the FRT-15. ATF's fine with that.

25 Q. Is there any way that you can fire a second shot

1 with an FRT-15 without pulling the trigger back again to
2 cause it to release the hammer?

3 A. It's impossible.

4 Q. So in sum, why is the FRT-15 not a machinegun?

5 A. Because it requires a separate function of the
6 trigger for each, and every shot fired from the gun.

7 Q. Kalen, can we please bring up Exhibit D?

8 Mr. O'Kelly, what we are looking at here is
9 Exhibit D. We are going to let this video play. And then
10 afterwards, I'm going to ask you a question.

11 You can let the video play?

12 A. Certainly.

13 Q. You can actually narrate it as it goes just for
14 the sake of efficiency.

15 THE COURT: And when you narrate, speak into that
16 microphone good and loud.

17 THE WITNESS: Yes, your Honor.

18 Okay. What you are concentrating on here, this is
19 a standard AR-15-type rifle, and it has an FRT-15 trigger in
20 it. If you watch the trigger, you see these yellow lines
21 superimposed on the screen, just to give you a point of
22 reference, and you see that for every shot fired, the
23 trigger is being pulled to the rear. It's moving to the
24 rear enough that it pivots down and disengages with the
25 hammer at that point. The gun fires another shot.

1 And then, as the bolt carrier moves rearward, it's
2 forcing the hammer down. That forces the trigger forward
3 again. And you see the trigger move forward to the reset
4 position physically.

5 Now, this movement is not a long distance,
6 granted. But by the same token, the trigger isn't required
7 to move very far to break that initial engagement between
8 the trigger and the hammer.

9 You are talking these miniscule, tiny notches that
10 fit together when a hammer and trigger are engaged. So to
11 break that engagement, the trigger only moves rearward on
12 any semiautomatic gun a tiny fraction of an inch.

13 Well, by the same token, to reengage, it only
14 moves forward a tiny fraction of an inch. So you are not
15 seeing, you know, a two-inch movement before and after here.

16 You are seeing, I've never really actually
17 measured it that I recall, let's say a tenth of an inch or
18 less, whatever it is, maybe more than that, but it's not a
19 big movement. But you see a separate and distinct
20 disengagement function, and then a reengagement function,
21 both functions happening every time a shot is fired.

22 MR. COLUMBO: Your Honor, before I forget, I just
23 wanted to move to admit Exhibit A, as well as Exhibit D that
24 Mr. O'Kelly has just described.

25 THE COURT: They will be admitted.

1 (Plaintiffs' Exhibits A and D were admitted into
2 evidence.)

3 (BY MR. COLUMBO:)

4 Q. Could we please pull up Exhibit B now?

5 Mr. O'Kelly, are you familiar with this video?

6 A. I am.

7 Q. Can we play this again and can you describe
8 what -- well, actually, why don't you give us the setup.
9 What are we about to see?

10 A. On the left you see at the top it says,
11 machinegun. This is just a typical M16. On the right it
12 says FRT-15 at the top. So this is a semiautomatic rifle
13 with the Rarebreed trigger in it.

14 You see in the center of the screen a round,
15 meaning or synonymous with shots; a round is a shot. So
16 shot count, shots fired. We are going to keep track of how
17 many shots are fired on both sides.

18 And down at the bottom you will see trigger
19 function. How times does the trigger function during this
20 stream of fire?

21 On the left for the M16, you are going to see one
22 trigger function. You are actually going to see the shooter
23 move the trigger to the rear once. That's going to
24 disengage that trigger from the hammer and initiate firing
25 the first shot.

1 At that point, the trigger never moves again. It
2 never moves forward. It never moves aft. It stays
3 stationary in the other parts of the gun. Due to the way
4 they are designed and their geometry, the gun will continue
5 firing up to however big the magazine is, 30 shots.

6 But on the FRT-15, let's say it's that same
7 30-shot magazine, you are going to see the round count build
8 up and up and up for every shot fired, but the trigger
9 function does the same thing.

10 You can physically see in the video that the
11 trigger for each shot is moving to the rear to disengage the
12 hammer and cause that function of releasing the hammer, and
13 then moving forward, being forced into the reengagement with
14 the hammer position once for each shot fired.

15 Q. Let's see.

16 (The DVD/audio was played.)

17 THE WITNESS: I'm not touching the remote. I
18 don't know why it's doing that.

19 (BY MR. COLUMBO:)

20 Q. All right. We got the idea. Well, with the M16
21 machinegun on the left, how many times does the trigger
22 function to release the hammer as it fires round after
23 round?

24 A. Just one. It serves to release the hammer for the
25 first shot, and then it's out of play for the remainder of

1 any given string of shots.

2 Q. And for the FRT-15 on the right, does the trigger
3 reset in between each shot fired?

4 A. Yes, it has to.

5 Q. With the FRT-15 on the right, how many times does
6 the trigger function to release the hammer for every shot
7 fired?

8 A. Once for each shot.

9 MR. COLUMBO: Your Honor, we move to admit Exhibit
10 B.

11 THE COURT: Exhibit B --

12 MR. COLUMBO: Yeah, B.

13 THE COURT: -- as in boy? It will be admitted.

14 (Plaintiffs' Exhibit B was admitted into evidence.)

15 MR. COLUMBO: Your Honor, we will reserve the
16 balance of our time for expert rebuttal and legal argument
17 that the Court would like to hear on the issues.

18 MR. CLENDENEN: Good afternoon, your Honor.

19 CROSS-EXAMINATION

20 (BY MR. CLENDENEN:)

21 Q. Mr. O'Kelly, were you ever assigned to work for
22 the Firearms and Ammunition Technology Division at ATF?

23 A. I was assigned on a one-week temporary duty there
24 at one point. I traveled there on a Sunday, showed up for
25 work there Monday morning. And then before that day was

1 even over, I was notified I had to return to Chicago because
2 I had court the next day. Disappointingly to me. So I
3 spent one day at Firearms Technology Division. But other
4 than that, no.

5 Q. And the Firearms Ammunition Technology Division,
6 that previously had another name, right, the Firearms
7 Technology Branch; is that correct?

8 A. It was a branch when, I don't know, until years
9 ago, then it got two branches, one for the commercial
10 firearms, and one for the criminal. And it became a
11 division too, yes.

12 Q. Were you ever assigned to work for the firearms --

13 MR. COLUMBO: Objection, your Honor. This line of
14 inquiry has nothing to do with the function of a trigger.
15 He's already been qualified as an expert.

16 THE COURT: Overruled.

17 MR. CLENDENEN: I'm sorry, your Honor, did you say
18 overruled?

19 THE COURT: Overruled. Go ahead.

20 (BY MR. CLENDENEN:)

21 Q. So just to finish the question, were you ever
22 assigned to work for the Firearms Technology Branch?

23 A. No.

24 Q. In any of your time at ATF, did you ever write a
25 classification report for ATF for a machinegun?

1 A. No.

2 Q. You also noted that you had testified as an expert
3 in over a hundred different cases. Were some of those times
4 you testified related to the nexus issue?

5 A. I'm sorry, a lot of what I did was nexus issues,
6 but what was your question?

7 Q. Just if any of the testimony you gave in court in
8 those hundred-plus times you testified, if some of those
9 were related to nexus?

10 A. Yes, they were.

11 Q. And can you just explain what the nexus issue
12 means?

13 A. When you prosecute many of the firearm or
14 ammunition violations under Title 18, one additional element
15 that must be proven is that the firearm or ammunition
16 affected interstate or foreign commerce.

17 So all that means in plain English is you have to
18 prove the gun was made outside the state where it was used
19 in a crime. And once you've done that, there are two or
20 more states are involved, so there is federal jurisdiction.
21 Otherwise, the case would have to go to a state court.

22 So one in 10 agents are specially trained to
23 determine where guns and ammunition are made. I was one of
24 those. And I later got to the point where I taught the
25 nexus schools. So, yes, a lot of the testimony I did was

1 about -- included nexus; it wasn't just nexus.

2 Q. And does the issue of nexus relate to whether or
3 not the firearm is a machinegun?

4 A. No. You don't have to prove interstate nexus on a
5 Title 26 case.

6 Q. I'm sorry, what was that?

7 A. On a Title 26 violation, you don't have to prove
8 interstate nexus.

9 Q. Do you know how many times you testified in court
10 specifically to the issue of whether or not the device is a
11 machinegun?

12 A. No. ATF has a procedure. It's their policy that,
13 if you get a sawed-off shotgun or short-barrel shotgun or
14 the agent testifies to that because they're like, hey, don't
15 clog up our workload at Firearm Technology, anybody can
16 measure a barrel.

17 But when it comes to machineguns, they insist that
18 you send the gun to Firearm Technology. They look at it.
19 They determine whether it falls within their opinion of what
20 they allow and what they don't want to allow. And then they
21 send an FEO out to testify about that aspect.

22 Q. I would like to move on to the operation of the
23 FRT-15. Do you know how much force is required to pull the
24 trigger to fire one round on the FRT-15, just in terms of
25 pounds?

1 A. We went over that in a prior court proceeding, but
2 I don't recall what the trigger weight is.

3 Q. Is it true that Rare Breed Triggers advertises it
4 as three and a half pounds of force?

5 A. I don't recall. It could be.

6 Q. You fired the FRT-15, correct?

7 A. Yes.

8 Q. Just in your estimate, does three and a half
9 pounds sound approximately correct for how much force is
10 required to pull a trigger?

11 A. It sounds a little light actually, but it could
12 be. I don't recall.

13 Q. A little light. Would you say it's more than
14 five pounds of force required?

15 A. What part of I don't recall do you want me to
16 further explain? I don't recall.

17 Q. Understood.

18 For the FRT-15, is it correct to say that, if you
19 pull too hard, if you apply a very high amount of force,
20 that you will overcome the operation and the firearm will
21 stop firing after one round; is that correct?

22 A. Yes. When you are firing an FRT-15, if you pull
23 the trigger so hard, and if you have the physical strength
24 to pull so hard that you interrupt the cycle of operation,
25 then the gun stops, because a semiautomatic or any

1 self-loading firearm has to -- well, any firearm has to
2 complete a cycle of operation to be able to fire the next
3 one, unless you go through all those steps we saw on the
4 screen, unlocking, extraction, ejection, et cetera, et
5 cetera, et cetera. If you pull so hard you make that stop,
6 and then it jams; it won't fire again.

7 Q. And that would basically make the firearm
8 malfunction; is that correct?

9 A. That would make it malfunction and jam, yes.

10 Q. Do you have any idea how much force is required to
11 do that, to overcome the cycle of operations?

12 A. No, I don't.

13 Q. But it's more than the amount required to just
14 pull the trigger normally, correct?

15 A. Yes, it would be a pretty strong pull to overcome
16 the force. I mean, to put it in a little bit of
17 perspective, the pressure generated in a cartridge in an
18 AR-15 is 50,000 pounds per square inch.

19 So that's a lot of rearward drive on the bolt
20 carrier. So that's a lot of force pushing down on the
21 hammer which is, in turn, pushing forward on the trigger.
22 So you have to really -- you have to have a really strong
23 grip to overcome that.

24 Q. So, just for the sake of this next question, let's
25 just assume that the threshold to pull the trigger once on

1 the FRT-15 is three and a half pounds.

2 In that case, what would happen if a shooter pulls
3 the trigger and applies over three and a half pounds, but
4 less than that other amount, so let's just say five pounds,
5 and just maintains constant pressure to the rear?

6 A. What would happen?

7 Q. Yes.

8 A. I don't know. The gun would either continue to
9 operate as designed or it would jam. I'm not sure where
10 that threshold is. Like I said, I don't know how many
11 pounds it is if you want a number that would cause you to
12 interrupt the cycle of operations, so I don't know if
13 five pounds is enough. I don't think it is.

14 Q. You're not sure if five pounds is enough to fire
15 one round or if it's enough to cause the gun to malfunction?

16 A. Five pounds would be enough to fire one round,
17 depending on what the trigger weight is, but I don't know
18 how many pounds it takes to interrupt the cycle of
19 operation.

20 Q. So let's just assume the trigger weight is three
21 and a half pounds, and also let's just assume, just to put a
22 number to it, that it requires 20 pounds to cause the
23 firearm to malfunction, if the shooter maintains five pounds
24 of pressure.

25 So more than the three and a half pounds, but less

1 than 20 pounds, and just maintains five pounds of pressure
2 to the rear, what would happen then with the FRT-15?

3 A. You're assuming so many things that this makes no
4 sense to me. That's not the way -- I'm not answering
5 something based on a bunch of assumptions that -- that's a
6 nonsensical question to me.

7 Q. Is there an amount of force that a shooter can
8 hold to the rear and just maintain a constant amount of
9 force that will make the FRT-15 fire multiple rounds?

10 A. With a single function of the trigger, it's
11 absolutely impossible, mechanically impossible.

12 Q. I didn't ask about the function of the trigger. I
13 just asked if the shooter maintains a certain amount of
14 force, is it possible for the firearm to fire multiple
15 rounds?

16 A. No, it's not. No matter how much pressure you put
17 on the trigger, you have to use enough pressure to cause the
18 trigger to release the hammer and you get one shot.

19 At that point, the trigger is forced back into the
20 reset and recaptures the hammer. And then, if you choose
21 to, you can use that same amount of pressure again, move the
22 trigger to the rear again, release the hammer again, and get
23 another shot.

24 Beyond that, if you use so much pressure that you
25 interrupt the cycle of operation, the gun just stops. There

1 is in no scenario are you getting more than one shot with a
2 single release of the hammer. That's physically impossible.

3 MR. CLENDENEN: If I may, your Honor, just grab
4 something? Your Honor, I have three copies of this
5 document. If you'd like me to give you one --

6 THE COURT: Very good. Yes.

7 MR. CLENDENEN: -- give one to the witness.

8 (BY MR. CLENDENEN:)

9 Q. Mr. O'Kelly, have you seen this document before?

10 A. I recognize it as one that I wrote, but I haven't
11 read it lately. So, yeah, I recognize it.

12 Q. So the title of this document is Expert Report of
13 Daniel O'Kelly for use in Federal Court; is that correct?

14 A. Yes.

15 Q. And you wrote this document?

16 A. I did.

17 Q. Was this document used in the Rare Breed Triggers
18 case in the Eastern District of New York?

19 A. I don't recall.

20 Q. Sorry. Just give me one second, your Honor.

21 Mr. O'Kelly, if you could turn to the fourth page
22 down at the bottom, it's marked RTF 0026602.

23 A. Okay.

24 Q. In that first full paragraph on that page, can you
25 just read that out loud?

1 A. First full paragraph that begins, "The advantage
2 provided by the FRT-15's design?"

3 Q. No. No. The first full paragraph. The one that
4 starts, "To reset the trigger after firing, a shooter."

5 A. I'm sorry, at the top.

6 "To reset the trigger after firing, a shooter can
7 either break contact with the trigger to allow the trigger
8 return spring to push it forward or lessen his rearward
9 pressure on the trigger. By lessening his rearward pressure
10 on the trigger, the shooter can maintain continuous contact
11 and rearward pressure on the trigger while it resets, so
12 long as he lessens the pressure enough for the spring to
13 work. Thus, a shooter can maintain contact and continuous
14 rearward pressure on a standard semiautomatic trigger while
15 firing shot after shot."

16 Q. Sorry. Give me another minute.

17 Can you go ahead and just read the next paragraph
18 also?

19 THE COURT: Focus at that microphone so we can
20 hear you better.

21 THE WITNESS: Yes, sir.

22 "The only difference between the FRT-15 and a
23 traditional semiautomatic AR-15 trigger is how the trigger
24 reset is accomplished. While a traditional semiautomatic
25 trigger uses the trigger return spring, the FRT-15 uses the

1 weapon's hammer to strike the top of the trigger mechanism
2 and mechanically force the trigger back to its original
3 position.

4 "This results in a more forceful push moving the
5 trigger forward to reset compared to a traditional trigger
6 return spring. This pressure is enough to force the trigger
7 forward and reset it, even if the shooter does not lessen
8 his rearward pressure on the trigger."

9 Q. So that last sentence there that says, "For the
10 FRT-15, the pressure is enough to force a trigger forward
11 and reset it, even if the shooter does not lessen his
12 rearward pressure on the trigger."

13 When it says that, "the shooter doesn't need to
14 lessen his rearward pressure on the trigger," does that mean
15 if they maintain the same amount of force above the three
16 and a half pound threshold that it will continue to fire
17 another round?

18 A. No. It will jam the gun. It will interrupt the
19 cycle of operation.

20 Q. Earlier you said that the amount of force required
21 to jam the gun would be very high, correct?

22 A. I don't think I used the term "very high." I
23 said, if you pull strongly enough to interrupt the cycle of
24 operation, the gun ceases to operate.

25 Q. And that amount of force is more than the amount

1 of force required -- more than the weight of the trigger,
2 correct?

3 A. More than the pressure required to release the
4 hammer. I mean, if the same amount of force that you use to
5 release the hammer would jam the gun, the thing would never
6 work. So there's a --

7 Q. Correct.

8 A. -- certain amount that releases the hammer. You
9 would have to exceed that considerably. And then you've
10 interrupted the cycle of operation. You've prevented that
11 trigger from resetting with the hammer, which prevents the
12 rest of the steps from occurring, and you're dead in the
13 water. You would have to clear the gun and reload it and
14 start over to start shooting again.

15 Q. So if the shooter uses just the amount of force
16 that is the trigger weight, let's just say hypothetically
17 three and a half pounds, and then per this expert report
18 does not lessen his rearward pressure on the trigger, the
19 firearm would reset? The trigger would reset, correct?

20 A. It says what it says. I'm not sure I'm clear on
21 your question. The last sentence, "The pressure is enough
22 to force the trigger forward." That is referring to the
23 pressure exerted by the hammer on the trigger. That's
24 enough pressure to move the trigger forward and reset it
25 with the hammer, "even if the shooter does not lessen his

1 rearward pressure on the trigger."

2 Obviously, the rearward pressure on the trigger
3 that the shooter is exerting is enough to have initially
4 released the hammer, but it's not enough to have jammed the
5 gun. So it's someplace in between. It's just enough to
6 pull the trigger and make the gun shoot.

7 Q. Okay. I would like to move on.

8 You did testify that the function of the trigger
9 is to release the hammer, correct?

10 A. It is.

11 Q. And that's true of any firearm?

12 A. No. Some firearms the trigger releases the bolt,
13 such as in an open-bolt firearm; it doesn't have a hammer.
14 Some guns like a Glock don't have a hammer. It's releasing
15 a striker, which is a spring-loaded firing pin.

16 But in any case, that's the purpose of the
17 trigger, to release whatever it is designed into that gun
18 which fires a shot.

19 Q. So is it correct to say that your definition of
20 the function of the trigger being to release the hammer only
21 applies to certain firearms; is that correct?

22 A. Hammer-fired firearms.

23 Q. Is it possible for the trigger to have more than
24 one function in any firearm?

25 A. Yes. It reengages with the hammer also. It

1 doesn't just release it, it reengages with it and captures
2 the hammer in the cocked position so that it's ready to fire
3 a subsequent shot.

4 Q. So a hammer can have more than one function is
5 what you're saying?

6 A. It does have more than one function.

7 MR. CLENDENEN: That's all the questions at this
8 time, your Honor. Thank you.

9 MR. COLUMBO: Very briefly.

10 REDIRECT EXAMINATION

11 (BY MR. COLUMBO:)

12 Q. Mr. O'Kelly, if you hold the trigger to its
13 rearward position on an FRT-15 and do not let it reset, how
14 many shots would be fired?

15 A. One.

16 Q. If you hold the trigger to the rear on an M16 and
17 do not let it move, how many shots will it fire?

18 A. However many are in the magazine until it runs out
19 of ammunition or until you let go of it.

20 Q. Is there any aspect of the definition of a
21 machinegun, as you know it, and as you've practiced it, that
22 turns on finger pressure?

23 A. Nothing. That has nothing to do with it.

24 Q. If indeed there was some amount of pressure
25 applied to the trigger of an FRT-15, more than enough to

1 start the first shot, but not enough to jam it, and more
2 than one shot was fired as a result, would that make it a
3 machinegun?

4 A. No.

5 Q. And why not?

6 A. It's not a machinegun as long as the trigger is
7 performing a separate function for every shot that comes out
8 the end of the barrel. That function being the releasing of
9 the hammer.

10 Q. And in between each shot the trigger is reset?

11 A. In between each shot the trigger has reset,
12 otherwise there wouldn't be a second shot. That's the way
13 it's designed. It's steel on steel. I mean, it can't -- it
14 can't find a way to supersede its own design. I mean, it
15 has to work this way, or it just stops working.

16 Q. And for each shot the trigger must move rearward?

17 A. Yes. It can't fire without moving the trigger.

18 Q. And the only force that can move a trigger
19 rearward in an FRT-15 is the user's finger?

20 A. Yes.

21 MR. COLUMBO: Thank you. No further questions.

22 THE COURT: Anything further?

23 MR. RESAR: Thank you, your Honor. Alex Resar on
24 behalf of defendants. The defendants call Mr. Anthony
25 Ciravolo.

1 THE COURT: Okay. I'm sorry, I was asking if you
2 had any follow-up recross?

3 MR. RESAR: No.

4 THE COURT: So no follow-up recross after the
5 redirect?

6 MR. CLENDENEN: No, your Honor.

7 THE COURT: Okay. You may step down.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: Now the floors yours.

10 MR. RESAR: Thank you, your Honor. The government
11 calls Mr. Anthony Ciravolo.

12 THE COURT: Very good. Thank you.

13 Would you raise your hand to be sworn, please?

14 (The oath was administered.)

15 THE WITNESS: Yes, I do.

16 THE COURT: Very good, if you would have a seat,
17 please?

18 THE WITNESS: Thanks.

19 DIRECT EXAMINATION

20 (BY MR. RESAR:)

21 Q. Thank you, Mr. Ciravolo.

22 Could you tell the Court what your current
23 position is?

24 A. I'm a Firearms Enforcement Officer with the
25 Alcohol, Tobacco, Firearms, and Explosives.

1 Q. And how long have you been a Firearms Enforcement
2 Officer?

3 A. Approximately three years.

4 Q. What are your duties in that role?

5 A. Currently, I examine samples that are submitted by
6 the firearms industry or general public, examine them,
7 prepare technical reports based on those findings.

8 I also examine evidence that is submitted by
9 federal law enforcement in the case of a criminal
10 prosecution.

11 I also help develop and administer training for
12 federal, local, and state law enforcement, as well as
13 provide that training too.

14 I currently have four trainees under me that I'm
15 mentoring as Firearms Enforcement Officers. I serve as the
16 senior peer review for all of the firearms technology
17 industry services correspondence that go out.

18 I assist maintaining the National Firearms
19 Collection, which houses approximately 14,000 firearms of
20 various design.

21 I also assist in maintaining a reference library
22 of publications which has about 2,000 written publications
23 on firearms.

24 Q. On what topics do you design and provide training?

25 A. On various firearms operations: The mechanical

1 function of firearms, some history of firearms, as well as
2 certain niche topics such as brand-name shotguns or trappers
3 or silencers.

4 Q. You mentioned classification or technical reports.
5 Could you explain for the Court what those are?

6 A. Sure. They are the culmination of our examination
7 of a firearm. It documents our findings, how the device or
8 firearm operates, and our classification under federal law
9 of that device.

10 Q. How many of those types of reports have you
11 prepared?

12 A. Just over 300.

13 Q. And what types of firearms have you examined in
14 those just over 300 reports?

15 A. I have examined and classified every type of
16 firearm that there is: Pistols, revolvers, shotguns,
17 rifles, machineguns, destructive devices, any other weapons.
18 Anything, you name it, I've examined it.

19 Q. Have you prepared reports finding what ends up not
20 to be machineguns?

21 A. Yes, of course.

22 Q. Do ATF agents prepare classification reports?

23 A. No, they do not.

24 Q. Only Firearms Enforcement Officers prepare these
25 classification reports?

1 A. That's correct.

2 Q. Do you know how you were selected or whether you
3 required any special qualifications to be selected to
4 prepare these types of reports?

5 A. In order to be qualified as a Firearms Enforcement
6 Officer, before you even interview you have to be qualified
7 by a panel as a subject matter expert in that field.

8 So you have to have some type of prior knowledge
9 and experience with firearms technology and design and
10 operation in order to even be qualified to interview.

11 Q. What was the prior experience or certifications
12 that you had to be so qualified?

13 A. I was a gunsmith in the firearms industry for
14 approximately five years.

15 Q. And what is a gunsmith?

16 A. A gunsmith is someone who has an intimate
17 knowledge of firearms operation and design. They will
18 usually pick a niche market to be in with custom building
19 firearms, or customizing certain firearms doing general
20 repairs, restorations, things of that nature.

21 Q. Is there a difference between a gunsmith and an
22 armorer?

23 A. Yes, there is.

24 Q. Can you explain for the Court what that difference
25 is?

1 A. An armorer has gone through training on a specific
2 weapons system, typically by the manufacturer or maybe the
3 military. And it will cover that specific weapons system,
4 it's maintenance schedule, the typical parts that fail.

5 Whereas, a gunsmith is taught how firearms
6 operate, and the technology as far as how to manufacture and
7 design these things. We are fabricators first. So we
8 completely build and fabricate tools, jigs, and any
9 associated parts needed for firearms.

10 Q. Would experience as an armorer alone qualify an
11 individual to serve as a Firearms Enforcement Officer?

12 A. If they were just an armorer, no. There were
13 plenty of Firearms Enforcement Officers that have armorer
14 certifications, but they also have a lot of other things
15 going for them. If someone was solely an armorer on just
16 one weapons system, like, they took an AR-15 armorers class,
17 that would not qualify them.

18 Q. In your five years as a gunsmith, how many guns
19 did you work on approximately?

20 A. I couldn't quantify that. It would be in the
21 thousands.

22 Q. Did you work on machineguns?

23 A. I have.

24 Q. Did you work on semiautomatic weapons?

25 A. Yes.

1 Q. And did you go to school to become a gunsmith?

2 A. I did.

3 Q. What school?

4 A. I attended Pennsylvania Gunsmith School in
5 Pittsburgh.

6 Q. Is it fair to say that's an elite gunsmith school?

7 A. It is one of the top gunsmith schools in the
8 world.

9 Q. Did you receive a degree or certificate from that
10 school?

11 A. Yes. I graduated with honors, and I received a
12 certificate as a small-arms technician.

13 Q. And what are small arms?

14 A. Small arms are typically sidearms, like pistols,
15 or rifles, or smaller caliber machineguns.

16 Q. Is an AR-15 a small arm?

17 A. Yes.

18 Q. And Mr. Ciravolo, do you own a gun personally?

19 A. Yes.

20 Q. How many, could I ask?

21 A. Yes. Right now, I only own about 15.

22 Q. And do you shoot those guns regularly?

23 A. Yes.

24 Q. I'm going to pass you a document now. What is
25 this document, Mr. Ciravolo?

1 A. This is my CV.

2 Q. Is this an accurate description of your work and
3 educational experience?

4 A. Yes, it is.

5 MR. RESAR: Defendants request to move into
6 evidence as defendants' Exhibit No. 1, the CV of Mr. Anthony
7 Ciravolo?

8 THE COURT: Defendants' Exhibit 1 will be
9 admitted.

10 (Defendants' Exhibit 1 was admitted into evidence.)

11 MR. RESAR: Defendants now tender Mr. Ciravolo as
12 an expert in mechanical operation of firearms and ATF
13 classification of firearms.

14 THE COURT: Yes.

15 (BY MR. RESAR:)

16 Q. Now, Mr. Ciravolo, as part of your job as an ATF
17 employee, were you asked to prepare a classification report
18 on the FRT-15?

19 A. Yes, I was.

20 Q. And what is an FRT-15?

21 A. An FRT-15 is a drop-in trigger device for
22 AR-15-style rifles.

23 Q. What do you mean by "drop in"?

24 A. A drop-in part is something that merely can be
25 installed with no modifications needed to the device itself

1 or the host firearm.

2 Q. Does it require any special skill or experience to
3 install an FRT-15 in a host firearm?

4 A. No, it doesn't require any special skill. The
5 only thing you need to be able to do is remove the fire
6 control group which is held in by two pins.

7 I can install one in probably less than three
8 minutes. I think probably the average person who's never
9 done it before could probably do it in 15 to 20 minutes
10 while following a YouTube video or something.

11 Q. Turning now to your report. I have a copy here
12 that's already on the record as CM/ECF 40-5. I would just
13 like to give you a copy so we can look at some of the things
14 as we go along. Here's a copy as well.

15 Is the document I have just passed you your
16 classification report?

17 A. Yes, it is.

18 Q. And did you reach any conclusions in this report?

19 A. I did.

20 Q. What were those conclusions?

21 A. That the FRT-15 is a machinegun.

22 Q. And could you explain briefly how you came to that
23 conclusion?

24 A. Yes, because once the firing sequence is
25 initiated, the weapon will continue to fire automatically

1 based on the internal mechanism of the weapon.

2 Q. And do you know whether ATF had conducted
3 classification analyses and produced classification reports
4 on similar trigger devices in the past?

5 A. Yes, they have.

6 Q. And what do you -- I guess, I said it -- but what
7 do you understand to be similar trigger devices?

8 A. I would say that similar trigger devices are ones
9 in which they use the mechanical action of the firearm to
10 press the trigger forward against the user, it's rearward
11 pressure. And they also incorporate some type of timing
12 mechanism to inevitably release the hammer when it's safe
13 for the weapon to fire again.

14 Q. And did ATF conclude that those similar trigger
15 devices that force the trigger chute forward and contain a
16 timing mechanism to release the hammer were also
17 machineguns?

18 A. Yes.

19 Q. When was the first classification of that type of
20 device as a machinegun, that you are aware of?

21 A. The first one that I know of is from 1975.

22 Q. Is a binary trigger similar to the forced reset
23 triggers we were just discussing?

24 A. No, it's not.

25 Q. Could you explain why that's not the case?

1 A. A binary trigger is designed so that it fires a
2 round on the pull of the trigger, and then, it fires a round
3 also on the release of the trigger. So the firing sequence
4 is being initiated each time the user takes some type of
5 manual action, whether that's holding or releasing.

6 Each time they do that, it initiates a new
7 sequence. The speed of which it does that is fully
8 controlled by the user. They can pull the trigger to the
9 rear and hold it there indefinitely and it will not fire
10 another round until the user takes that manual action to
11 initiate another sequence.

12 Q. Are you familiar with the 3MR?

13 A. Yes. Are you referring to the Tac-Con 3MR?

14 Q. Yes.

15 And what is a Tac-Con 3MR?

16 A. The Tac-Con 3MR is another forced reset-type
17 trigger.

18 Q. Is that a similar type of trigger to the forced
19 reset triggers that also contain timing mechanisms we were
20 just discussing?

21 A. No, it's not. The only similarity between the two
22 devices is that the 3MR does push the trigger finger
23 forward, but not enough to complete the reset for you.

24 The user still has to reduce pressure on the
25 trigger to complete the reset, and then pull the trigger to

1 the rear again to initiate another firing sequence. And
2 there is no timing mechanism whatsoever in the Tac-Con 3MR.

3 Q. If a user maintained constant rearward pressure on
4 the Tac-Con 3MR, would the firearm continue to fire?

5 A. No, it would not. It would just fire one round,
6 and then cease to fire any more.

7 Q. If a user maintained constant rearward pressure on
8 a firearm equipped with an FRT-15, would the firearm
9 continue to fire?

10 A. Yes, it would.

11 Q. Turning back to -- or does this describe
12 everything that you did to examine the FRT-15?

13 A. Yes, it does.

14 Q. And what are those steps you took to examine the
15 FRT-15?

16 A. Typically, when we begin to examine a product, we
17 will examine it as we receive it, look over it, function
18 test it, see how the parts interact with each other.

19 We will then disassemble it to inspect the parts,
20 see how they're designed to interact with each other, how
21 it's designed to work, what features it has. And then, we
22 will install it into a host firearm and function test it
23 again and then live fire it.

24 Q. Are those the steps -- the generally recognized
25 steps that an expert in firearms operation would take to

1 determine how a particular product works?

2 A. Yes.

3 Q. You just testified to this, but there are other
4 forced reset triggers that include a timing mechanism beyond
5 the FRT-15; is that correct?

6 A. Yes, it is.

7 Q. Does your conclusion that the FRT-15 is a
8 machinegun also apply to those other forced reset triggers,
9 assuming those other forced reset triggers also contain a
10 timing mechanism?

11 A. Yes, it does.

12 Q. Have you testified, Mr. Ciravolo, about the
13 classification of the FRT-15 before?

14 A. Yes, I have.

15 Q. And was that on August 1, 2023, in the Eastern
16 District of New York?

17 A. That is correct.

18 Q. Does the document I just handed you appear to be a
19 complete and accurate copy, understanding it's some 600
20 pages of the transcript from the day of your testimony in
21 New York?

22 A. Yes, I believe so.

23 MR. RESAR: Move to introduce Exhibit 2, the
24 transcript from day one of the Egan proceedings.

25 THE COURT: It will be admitted.

1 (Defendants' Exhibit 2 was admitted into evidence.)

2 (BY MR. RESAR:)

3 Q. Before we dive in, I want to discuss a few common
4 terms that we will be using throughout your testimony today.
5 First, types of firearms. What's an AR-15?

6 A. An AR-15 is a semiautomatic version of the
7 military's M16 machinegun. It was originally invented by
8 Eugene Stoner. A company call ArmaLite then made prolific
9 by Colt in the late '50s early '60s.

10 Q. Is it fair to say the AR-15 is shorthand for a
11 certain category of semiautomatic rifles?

12 A. Yes. It's a very, very broad term based on a
13 certain pattern of rifle.

14 Q. Is the FRT-15 intended to work with AR-15s?

15 A. Yes, it is.

16 Q. And what's an M16?

17 A. As I said, the M16 is the military's machinegun
18 version of the AR.

19 Q. Is the M16 fully automatic?

20 A. It is.

21 Q. Is there any dispute, that you are aware of, as to
22 whether the M16 satisfies the statutory definition of a
23 machinegun?

24 A. None that I am aware of.

25 Q. Let's talk briefly about some of the functions and

1 parts of a firearm. What is a trigger?

2 A. A trigger is simply the mechanism which initiates
3 the firing sequence on a firearm.

4 Q. And what is a hammer?

5 A. A hammer in hammer-fired guns is the component
6 which strikes the firing pin.

7 Q. Does a hammer have a sear surface?

8 A. Yes, it does.

9 Q. And what is a sear surface?

10 A. A sear surface is simply a machine surface on a
11 component part that is designed to interact with another
12 machine surface. Typically, one of those parts will retain
13 the other component.

14 Q. Are you familiar with something called an
15 automatic sear?

16 A. I am.

17 Q. And what is an automatic sear?

18 A. An automatic sear is simply a timing mechanism
19 that is found in machineguns.

20 Q. Does an AR-15 contain an automatic sear?

21 A. In a semiautomatic, no, it does not.

22 Q. Does an AR-15 need to be timed in any way?

23 A. For a semiautomatic, no, it does not.

24 Q. And why is that?

25 A. Because the semiautomatic has a disconnecter in it

1 which is designed to stop the cycle from continuing. It
2 will indefinitely retain the hammer until the user manually
3 reduces pressure. So there's no need for a timing mechanism
4 in that whatsoever. The system is designed to stop.

5 Q. Just so I'm clear. The system is designed to stop
6 through a disconnecter; is that correct?

7 A. Yes.

8 Q. Does an FRT-15 have a disconnecter?

9 A. No, it does not.

10 Q. Does an M16 in automatic mode have a functioning
11 disconnecter?

12 A. No, it does not. The disconnecter of an M16 is
13 taken completely out of play in the automatic setting.

14 Q. And what is the bolt carrier group in an M16 or
15 AR-15?

16 A. It's a culmination of several different parts that
17 are all housed in one unit. It incorporates the bolt
18 itself, the firing pin, the ejector, the extractor, the gas
19 key.

20 Q. Okay. I would like you to walk the Court now
21 through the firing cycle and operation of a standard AR-15
22 equipped with a factory trigger.

23 We're going to be using some of the images in your
24 report. So to follow along, it may be helpful to turn to
25 page 30 in your report, which I handed up earlier.

1 Looking at the image on the left-hand side of the
2 page, to start with, what is this image from?

3 A. Hold on. Let me catch up with you here.

4 Q. Of course. Thank you. Sorry. That's page 30,
5 ECF page 30. In the upper right-hand corner there's an
6 internal page numbering system, and that says page 13.

7 And just to be clear, the Bates No. is ATF 0261,
8 depending on if you wanted another page to follow up on.

9 A. Okay. I'm with you.

10 Q. Where are these images taken from, focusing on the
11 images on the left-hand side of the picture?

12 A. These are still images taken from the video
13 animation earlier.

14 THE COURT: I didn't follow any of that.

15 MR. RESAR: I apologize for that, your Honor.

16 Upper right-hand corner, we will say page 13.

17 THE COURT: Okay. Okay. Thank you.

18 (BY MR. RESAR:)

19 Q. I'm sorry, Mr. Ciravolo, could you just repeat
20 your answer as to where these images are taken from?

21 A. Yes. These are still images taken from the video
22 animation that we saw earlier.

23 Q. What does the image on the left side depict?

24 A. An AR-15 equipped with a standard semiautomatic
25 trigger group.

1 Q. And where is the trigger in this image?

2 A. It is the blue component in the middle lower
3 portion of the image.

4 Q. And where is the hammer?

5 A. It is the black component that is just above the
6 trigger.

7 Q. Where is the bolt carrier?

8 A. It is the teal-ish color, cylindrical piece at the
9 very top of the image.

10 Q. Lastly, where is the disconnecter area?

11 A. It is the green component in the middle of the
12 image.

13 Q. Is there any mechanism here that times an AR-15?

14 A. No, there is not.

15 Q. Now, if the shooter wants to fire the weapon from
16 this position, which you testified is the ready-to-fire
17 position, what must happen?

18 A. Assuming the weapon is already placed on the fire
19 mode, the user would have to place their finger on the
20 trigger, and then apply rearward pressure to the trigger in
21 order to move it rearwards.

22 Q. And as the shooter applies reward pressure to the
23 trigger shoe, what happens to the other pieces in this
24 image?

25 A. The trigger will pivot, and the front of it will

1 be pulled downwards, and it will disengage from the sear
2 surface with the hammer, which allows the hammer to travel
3 freely under pressure from the hammer spring.

4 Q. If we turn to the next page in your report, does
5 this image on the left show what you just described?

6 A. Yes, it does. It's showing the sear surfaces are
7 disengaged. The hammer has moved forward and struck the
8 firing pin.

9 Q. Is the shooter still exerting rearward pressure on
10 the trigger at this point?

11 A. Yes, they are.

12 Q. And what's going to happen next?

13 A. Next is the bolt carrier group is going to begin
14 its rearward travel, and it will start acting upon the
15 hammer.

16 Q. And what will the bolt carrier group do to the
17 hammer as the bolt carrier group starts its rearward travel?

18 A. It will begin pivoting it and rotating it and
19 pushing it rearwards and then downwards to complete the
20 cocking phase of the cycle of operations.

21 Q. If we could turn then to page 32 in your report,
22 the very next page. Does this show the rearward travel of
23 the bolt carrier group acting upon the hammer?

24 A. Yes, it does.

25 Q. And is the shooter still exerting rearward

1 pressure on the trigger at this point?

2 A. Yes, they are.

3 Q. And what will happen next as the bolt carrier
4 group rotates the hammer rearwards?

5 A. Eventually the hammer will continue to be pushed
6 rearward and then down and it will come in contact with the
7 disconnecter and those sear surfaces will become engaged.

8 Q. If we could turn, skipping over a few pages, to
9 page 35 in your report. Does the image in the yellow box
10 show the disconnecter sear surface engaging the hammer's
11 sear surface?

12 A. Yes, it does.

13 Q. Is the shooter still exerting rearward pressure at
14 this point?

15 A. Yes, they are.

16 Q. Now that the disconnecter sear surface has engaged
17 the hammer sear surface, can the hammer move forward?

18 A. No, it cannot.

19 Q. Can the weapon fire again?

20 A. No, it cannot.

21 Q. And why can it not fire again?

22 A. Because the disconnecter is retaining the hammer
23 independently.

24 Q. What would have to happen for the weapon to fire
25 again?

1 A. The user would have to reduce pressure on the
2 trigger to allow it to reset, and then reapply pressure to
3 the trigger to initiate another firing sequence.

4 Q. Is that different from an FRT-15?

5 A. Yes, it is.

6 Q. Could you explain why that's different?

7 A. Well, the FRT-15, in its design, is designed so
8 that it will forcibly reset the trigger for you. That's not
9 a step that the user has to take anymore. That's completely
10 done for you. It's an automatic process now.

11 So you take from a semiautomatic what is normally
12 a manual process and now it's an automatic process based on
13 the mechanism of the device itself.

14 Q. And if the user retained rearward pressure on an
15 AR-15 semiautomatic trigger, will the weapon fire again?

16 A. No, it won't.

17 Q. If a user maintained rearward pressure on an
18 FRT-15 trigger, will the weapon fire again?

19 A. Yes, it will.

20 Q. Turning now to page 39 in your report. I want to
21 look at the two images on the left there, page 39, numbered
22 page 21.

23 MR. COLUMBO: Twenty-one in the upper left.

24 MR. RESAR: Yes, 21 in the upper left. Sorry, I
25 apologize, 22.

1 (BY MR. RESAR:)

2 Q. What do these two images show?

3 A. Just to be clear, we are looking at page 39 of 57,
4 but the page that is marked is page 22?

5 Q. Yes, that's correct. Thank you for that
6 clarification.

7 A. These two pictures on the left show the trigger
8 being reset while the bolt is in motion.

9 Q. What will eventually happen to the bolt that is in
10 motion in these two images?

11 A. It will return to its foremost position and fully
12 lock up into battery.

13 Q. Once the bolt has fully locked up into battery,
14 will an AR-15 semiautomatic weapon fire again?

15 A. No, it will not.

16 Q. And why not?

17 A. Because the disconnecter is retaining the hammer
18 at this point.

19 Q. I believe you testified on this earlier, but does
20 an FRT-15 have a disconnecter?

21 A. No, it does not.

22 Q. So once the bolt carrier group has returned to
23 lock-up position, such that the AR-15 is capable of firing
24 again, what does the shooter have to do to ensure that the
25 weapon does fire again?

1 A. They would have to reduce pressure on the trigger
2 to allow it to reset, and then reapply pressure on the
3 trigger to initiate another firing sequence.

4 Q. How is that different from what the user of an
5 FRT-15 must do to ensure another round is fired by the
6 FRT-15?

7 A. The only thing on an FRT-15 that the user has to
8 do is just maintain that pressure applied to the trigger.
9 They don't need to release it or reduce pressure in any
10 manner whatsoever. They just need to maintain that status
11 of it being -- having rearward pressure applied to it.

12 Q. And going back to these images, what you just
13 described through these images is a standard semiautomatic
14 trigger; is that correct?

15 A. Yes.

16 Q. Are you aware of any dispute as to whether that
17 trigger is a machinegun?

18 A. None, to my knowledge.

19 Q. And a firearm with that type of trigger is legal,
20 correct?

21 A. Pardon me?

22 Q. And a firearm with that type of trigger is legal,
23 correct?

24 A. Assuming that person isn't a prohibited person,
25 yes.

1 Q. And just to summarize the AR-15's firing cycle.
2 After the trigger has initiated one firing sequence, will
3 the weapon fire again by its own automatic function?

4 A. No, it will not.

5 Q. To fire again would require additional input from
6 the shooter; is that correct?

7 A. Yes, that's correct. As I said, they would have
8 to reduce the pressure on the trigger to reset it.

9 Q. And to fire again would then require that the
10 trigger function begin by initiating a new firing setup; is
11 that correct?

12 A. Yes, it is.

13 Q. Okay. I would like you to walk the Court now
14 through the firing cycle and operation of a standard M16
15 machinegun. Again, we're going to be using the graphics and
16 images from your report. If we could turn to internally
17 numbered page 26.

18 I'm going to the stick with that number because
19 that's the one that's probably easiest to see.

20 A. The number on the top right-hand corner?

21 Q. Yeah. The number on the top right-hand corner.

22 A. Okay.

23 Q. Again, looking at the images on the left-hand side
24 of the page, where are the images on the left-hand side of
25 the page taken from?

1 A. These are from a video animation of an M16 fire
2 control groups operation.

3 Q. Do they accurately depict how an M16-type
4 machinegun firing group works?

5 A. Yes.

6 Q. And you are not aware of any dispute as to whether
7 or not an M16-type machinegun satisfies the statutory
8 definition of a machinegun, correct?

9 A. No, I am not aware of any dispute.

10 Q. So what does this image on the left show?

11 A. The image on the left shows the M16 equipped with
12 its fire control group in the ready-to-fire configuration.

13 Q. And where's the trigger here?

14 A. It is the yellow component in the middle lower
15 portion of the picture.

16 Q. And where's the hammer?

17 A. Just above the trigger. It is the pink component.

18 Q. Where's the bolt carrier group?

19 A. Just above the hammer. It is the green
20 cylindrical piece at the top.

21 Q. Is there something called an automatic sear in
22 this image?

23 A. Yes, there is.

24 Q. What's that, or where is that? Sorry.

25 A. It is the teal-colored piece to the left of the

1 hammer.

2 Q. And what's the purpose of an automatic sear?

3 A. To time the weapon.

4 Q. You testified to this earlier, but I just want to
5 be crystal clear. An AR-15 does not have a timing
6 mechanism, correct?

7 A. That is correct.

8 Q. Does an FRT-15 have a timing mechanism?

9 A. Yes, it does.

10 Q. And is there something called a selector in this
11 image?

12 A. Yes, there is.

13 Q. Where is the selector located?

14 A. It is the orange cylindrical piece just below the
15 automatic sear.

16 Q. And what's the purpose of the selector in the
17 M16-type machinegun?

18 A. It allows the user to select the fire mode. Your
19 options are safe, semiautomatic, and then automatic.

20 Q. And once you select automatic, what does the
21 selector do to the images in this photo?

22 A. When it's moved all the way to the automatic
23 position, it does two things: One, there's a clearance cut
24 for the leg of the automatic sear. You can see the leg is
25 the lower, the piece on the left that goes downward. So it

1 allows the automatic sear to move into position so it can be
2 used in the automatic mode.

3 The other thing it does is there is a camming load
4 on the safety selector itself that interacts with the
5 disconnecter. So when it's placed into the automatic
6 position, that camming load pushes the disconnecter down and
7 takes it completely out of play for the cycle.

8 Q. So is it fair to say that then, in automatic mode,
9 the disconnecter doesn't exist?

10 It's here but it's not functioning?

11 A. That's correct.

12 Q. Is it fair to say then that the two major
13 differences between an AR-15 and an M16 in automatic mode,
14 are that an AR-15 has a functioning disconnecter, and that
15 the M16 has a timing mechanism?

16 A. Yes, that's correct.

17 Q. Does the FRT-15 have a functioning disconnecter?

18 A. No, it does not.

19 Q. And does the FRT-15 have a timing mechanism?

20 A. Yes, it does.

21 Q. Going back to this image. Where in the cycle of
22 operations is the weapon on this page?

23 A. This is in the ready-to-fire configuration. So
24 this is before the firing sequence has been initiated.

25 Q. What is holding the hammer in place?

1 A. The primary sear surface on the trigger.

2 Q. What must the shooter do to fire an M16-type
3 machinegun?

4 A. Assuming the selector is placed in the automatic
5 position, they would have to place their finger on the
6 trigger and then apply rearward pressure to the trigger to
7 disengage the sear surface to the hammer.

8 Q. What will happen to the hammer once the shooter
9 applies rearward pressure to the trigger?

10 A. The sear surfaces will disengage, and the hammer
11 will fall under pressure from the hammer spring and strike
12 the rear of the firing pin.

13 Q. If we could turn to the next page then, does this
14 image still on the left show what you just described?

15 A. Yes, it does.

16 Q. And is the shooter still applying rearward
17 pressure on the trigger at this point?

18 A. Yes, they are.

19 Q. And after the hammer has struck the firing pin so
20 as to release a round, what's going to happen next to the
21 bolt carrier?

22 A. The bolt carrier group will begin its rearward
23 travel and start acting upon the hammer.

24 Q. If we could turn then to the very next page. Does
25 this show the bolt carrier group moving rearward and acting

1 upon the hammer?

2 A. Yes, it does. In this image you can see the
3 hammer is being rotated and pushed downward.

4 Q. Is the shooter still exerting rearward pressure on
5 the trigger shoe at this point?

6 A. Yes, they are.

7 Q. And what happens to the -- is the automatic sear
8 engaged yet in this image?

9 A. The automatic sear has not engaged with the hammer
10 yet, but it is in play now. You can see the lower portion
11 of it has been pivoted forward, towards the front of the
12 gun, so that the automatic sear can interact with the
13 hammer.

14 Q. And as the bolt carrier group -- well, first, will
15 the bolt carrier continue moving backward?

16 A. Yes, it will.

17 Q. And as the bolt carrier group moves backward or
18 rearward, what is going to happen to the automatic sear?

19 A. The automatic sear will be interacted with on the
20 sear surface of the hammer. You can look all the way on the
21 left of the image there and see the automatic sear notch on
22 the hammer, where its sear surface interacts with the
23 automatic sear.

24 The hammer will be pushed past the automatic sear.
25 And then those two sear surfaces will become engaged with

1 each other.

2 Q. Is that different, looking at it from the hammer's
3 perspective, to what happens in a hammer in a semiautomatic
4 AR-15?

5 A. Yes, it does.

6 Q. And how is it different?

7 A. Well, in the semiautomatic, the hammer is captured
8 and retained by the disconnecter and will do so indefinitely
9 until pressure is reduced from the trigger.

10 In an M16 machinegun, the hammer will be captured
11 temporarily by the automatic sear. And then once the system
12 is fully locked again, the hammer will be released to fire
13 and continue the sequence.

14 Q. Is anything required beyond constant rearward
15 pressure on the trigger shoe for the firing sequence in an
16 M16 to continue?

17 A. No. The only thing necessary is to maintain the
18 constant rearward pressure.

19 Q. And is there anything required on a firearm
20 equipped with an FRT-15 for the firing sequence to continue
21 beyond constant rearward pressure on the trigger?

22 A. No. That's the only thing the user has to do is
23 maintain that pressure on the trigger.

24 Q. Turning to the next page in your report then, 46.

25 THE COURT: What page?

1 MR. RESAR: Sorry. Page 29 on the upper
2 right-hand corner.

3 (BY MR. RESAR:)

4 Q. Can you describe what's happening in this image
5 now?

6 A. Yes. What we're seeing is the bolt is near its
7 rearmost travel point. We see in the leftmost square that
8 the automatic sear notch and sear surface of the hammer will
9 be engaged with the automatic sear.

10 In the middle square we see that the disconnecter
11 has no contact with the hammer, as it's been taken out of
12 play. And on the right square, we see that the primary sear
13 of the trigger is down and out of engagement with the
14 hammer.

15 Q. Is the bolt carrier group going to stop moving
16 rearward at some point?

17 A. Yes, it will.

18 Q. Will it then move forward?

19 A. Yes.

20 Q. And what's going to happen to the hammer and
21 automatic sear as the bolt carrier group moves forward?

22 A. Those two sear surfaces will become fully engaged
23 with each other so that the automatic sear can temporarily
24 retain the hammer. And then the bolt carrier will continue
25 forward and pick up the cycle of operations by feeding a

1 round out of the magazine and then chambering that round and
2 then eventually locking when it comes to its foremost point.

3 Q. You said the automatic sear will only temporarily
4 retain that hammer. When will the automatic sear stop
5 acting upon the hammer?

6 A. The automatic sear will release the hammer as soon
7 as the bolt has reached its foremost position and is fully
8 locked, because that's the first instant that the weapon is
9 safe to fire. So the system is only designed to temporarily
10 retain the hammer until that moment.

11 Q. So as soon as the bolt carrier group has returned
12 to lockup, returned to its forward most position, what does
13 the shooter have to do for the weapon to fire again?

14 A. The only thing that the shooter has to do with an
15 M16 is maintain that rearward pressure on the trigger to
16 keep the primary sear out of play.

17 Q. I would like you to show this process on a cutaway
18 that we have here. I will ask Mr. Ciravolo to explain what
19 it is once it's up there.

20 Mr. Ciravolo, can you explain what it is that I
21 just handed you?

22 A. Yes. This is an M16 receiver equipped with the
23 standard machinegun fire control group.

24 MR. RESAR: Defendants' move to introduce this
25 Exhibit 3, I believe we're on.

1 THE COURT: Yes. Exhibit 3 will be admitted.

2 (Defendants' Exhibit 3 was admitted into evidence.)

3 (BY MR. RESAR:)

4 Q. Where is the cycle of operations in this cutaway?

5 A. Currently it's in the ready-to-fire configuration.

6 Q. So to fire the weapon, what must the shooter do?

7 A. They must place their finger on the trigger, and

8 then apply rearward pressure to the trigger to fire it.

9 Q. Can you show using the cutaway what will happen to

10 the hammer when the shooter applies that rearward pressure?

11 A. Sure. So we can see the sear surfaces right here

12 are engaged. As I pull the trigger to the rear, it will

13 move down and fire the weapon.

14 Q. And there's not a bolt carrier group attached to

15 this cutaway; is that correct?

16 A. Yes, that's correct.

17 Q. And the bolt carrier group, after the hammer hits

18 the firing pin, is going to start moving rearward; is that

19 correct?

20 A. Yes, that is.

21 Q. So using your finger to serve as the bolt carrier

22 group, can you show what will happen to the hammer,

23 automatic sear, and trigger as you move the bolt carrier

24 group rearward?

25 A. Sure.

1 So with the trigger being held rearward, you can
2 see the front of it is down and out of engagement. The
3 hammer moves rearward. And here you can see the sear
4 surface at the top of the hammer, and this is the automatic
5 sear here. And as it moves, it will bypass it and engage
6 with the automatic sear. So the automatic sear is now
7 retaining the hammer.

8 Q. And would all this occur just from maintaining
9 constant rearward pressure on the trigger shoe?

10 A. Yes, it will.

11 Q. If the shooter were to maintain that constant
12 rearward pressure on the trigger shoe, the bolt carrier
13 group is eventually going to reach its most rearward
14 position, and then start moving forward again; is that
15 correct?

16 A. Yes, it is.

17 Q. And would that happen automatically by the
18 mechanical energy generated by the firearm?

19 A. Yes, it will.

20 Q. And what's going to happen as the bolt carrier
21 group moves forward?

22 A. The bolt carrier group will move forward, and it
23 will pick up a new round. It will chamber that round and
24 then it will enter into the locked position as it comes
25 fully to rest in the foremost position.

1 Q. And just to be clear, the shooter is not doing
2 anything other than maintaining constant rearward pressure
3 on the trigger?

4 A. That's correct.

5 Q. Can you show what will happen, again using your
6 finger to simulate the bolt carrier group, what will happen
7 as the bolt carrier group moves forward?

8 A. Sure.

9 The trigger surface on the bolt carrier will
10 interact with the top of the automatic sear and push it
11 forward. And when it does that, it will release the hammer
12 and the hammer will continue the firing sequence.

13 Q. When will an M16 machinegun stop firing?

14 A. It will only stop firing once the user either
15 releases pressure on the trigger to reengage the trigger
16 with the hammer, or the ammunition is exhausted, or there's
17 a malfunction.

18 Q. I would like you to walk the Court now through the
19 firing cycle and operation of a firearm equipped with an
20 FRT-15. Again, we're going to be using the images from your
21 report. Let's start on page 26 in the upper right-hand
22 corner.

23 Now, looking at the images on the right-hand side
24 of the page. Can you explain where the image on the
25 right-hand side of the page is taken from?

1 A. Just give me a second to catch up with you.

2 Okay. The image is taken from -- it's a still
3 image taken from the video that we watched earlier. The
4 animated video.

5 Q. Does this image accurately depict the functioning
6 of an FRT-15?

7 A. It does.

8 Q. And where is the trigger in this image?

9 A. The trigger is the red component in the center of
10 the image.

11 Q. Where is the hammer?

12 A. The hammer is the component just above the
13 trigger.

14 Q. And the bolt carrier is the same thing we've been
15 looking at in the other two firearms; is that correct?

16 A. Yes.

17 Q. Is there a disconnecter in this image?

18 A. No, there's not.

19 Q. What again was the purpose of a disconnecter in an
20 AR-15?

21 A. To stop the cycle of operations from continuing
22 and retain the hammer indefinitely.

23 Q. There's a green-colored bar on the left-hand side
24 of the page in that same image. What is that bar?

25 A. That is the locking bar.

1 Q. What is a locking bar?

2 A. It is a timing mechanism in the FRT-15.

3 Q. Again, what does it mean to time a weapon?

4 A. Timing weapons, in relation to automatic weapons,
5 is simply ensuring that the fire control group cannot be
6 activated until the moment that it is safe for the weapon to
7 fire again.

8 They're designed to temporarily pause or retain
9 components, and then eventually continue the sequence and
10 release those components once the firearm is fully locked
11 and safe to shoot again.

12 Q. Does a factory AR-15 have a timing mechanism?

13 A. No, it does not.

14 Q. So what kind of weapons require a timing mechanism
15 then?

16 A. Machineguns.

17 Q. And what cycle or what point in the cycle of
18 operations does this image of the FRT-15 trigger group
19 depict?

20 A. This is a firearm in a ready-to-fire configuration
21 prior to the initiation of a firing sequence.

22 Q. What must a shooter do to fire the weapon?

23 A. Place a finger on trigger and apply rearward
24 pressure to the trigger.

25 Q. What happens immediately after the shooter applies

1 that rearward pressure, starting with the hammer, and then
2 continuing to the other pieces in this image?

3 A. Just as before, the sear surfaces on the trigger
4 and hammer will disengage from each other. The hammer will
5 be free to travel from pressure under its spring and strike
6 the firing pin.

7 Q. If you could turn to the very next page then, page
8 27, in the upper right.

9 Does this image show what you just described, the
10 hammer having been disengaged from the trigger sear surface
11 and having struck the firing pin?

12 A. Yes, it does.

13 Q. And just to be clear, what happens when the hammer
14 strikes the firing pin?

15 A. The firing pin will hit the rear of the primer,
16 which ignites the primer, and then ignites the propellant
17 powder, and the cause of that explosion propels the bullet
18 down the barrel of the firearm.

19 Q. So to summarize, a shot is fired?

20 A. Yes, that is correct.

21 Q. Has the trigger moved from the previous image we
22 looked at, which was a snapshot before the firing cycle had
23 been initiated?

24 A. Yes, it has.

25 Q. And which way did the trigger move?

1 A. The trigger moved rearwards.

2 Q. And it's not depicted here, but what would have
3 caused the trigger to move rearward?

4 A. The user applying their pressure to the trigger
5 shoe itself.

6 Q. Has the locking bar, which is the green bar you
7 testified, moved in this image yet?

8 A. No, it has not.

9 Q. And what's going to happen next?

10 A. The bolt carrier will begin its rearward travel
11 and act on the hammer as it has previously.

12 Q. If you turn to page 28, the very next page?

13 Can you tell us what is happening in this image?

14 A. Yeah. We're seeing the bolt carrier acting on the
15 hammer, rotating it. We're seeing -- this is the moment
16 just before the hammer comes in contact with the top of the
17 trigger. You can see the protrusion at the top of the
18 trigger between the hammer where those two surfaces are
19 about to contact each other.

20 Q. And is the shooter still exerting rearward
21 pressure on the trigger at this point?

22 A. Yes, they are.

23 Q. Has the locking bar moved?

24 A. No, it has not.

25 Q. And what's going to happen next as the bolt

1 carrier group continues its rearward path?

2 A. Well, the bolt carrier group is still acting on
3 the hammer, will continue to push it down. The hammer will
4 come in contact with the trigger, which then pushes the
5 trigger down, which forces the trigger shoe itself forward
6 against the user's rearward pressure.

7 Q. So to be absolutely clear, it will cause the
8 trigger shoe to move forward?

9 A. Yes, it will.

10 Q. And will the pressure created from the bolt
11 carrier group moving rearward push the trigger shoe forward,
12 even if the shooter is maintaining some rearward pressure on
13 the trigger?

14 A. Yes, it will. The system is designed so that it
15 overcomes the user's rearward pressure. We talked earlier
16 about what could happen if the user applies too much
17 pressure and causes it to malfunction, but the system is
18 designed so that it overcomes the user's force holding the
19 trigger rearward.

20 Q. Did you hear Mr. O'Kelly testifying that the
21 forced reset is no different from the spring acting on the
22 trigger shoe pushing the trigger shoe forward?

23 A. I did.

24 Q. Do you agree with that statement?

25 A. No, I do not.

1 Q. And can you explain why you believe it to be
2 inaccurate?

3 A. The trigger spring on a firearm is designed with
4 such a lightweight resistance that it's designed for the
5 user to very easily overcome that force. It's designed so
6 that the user can maintain that status of overcoming the
7 force.

8 The trigger spring on a firearm is typically so
9 lightweight that a child can shoot. Most of us teach our
10 young children to shoot at a young age, right? But the
11 FRT-15 is designed so that the system will mechanically
12 overcome the user's input of holding the trigger to the
13 rear. So it's completely different.

14 One of the systems is designed to easily be
15 overcome by the user. Whereas the other system, the FRT-15,
16 is designed to overcome the user.

17 Q. And let me ask that again in a slightly different
18 way. If a user retains -- yeah, retains rearward pressure
19 on an AR-15 trigger, is the spring in the trigger shoe going
20 to push the user's finger forward?

21 A. On an FRT-15?

22 Q. On an AR-15.

23 A. On an AR-15, no, it will not push the user's
24 finger forward.

25 Q. And that's true so long as the user is maintaining

1 a constant rearward pressure sufficient to overcome the
2 minimal weight necessary to overcome the trigger shoe
3 spring; is that correct?

4 A. Yes, it is. As I said, the trigger spring is
5 only -- its only job is to push the trigger forward to a
6 reset position. So it only has to be strong enough to move
7 one or two ounces of weight, whatever weight that the
8 trigger itself is, just to return it to that position. It's
9 designed so that it only does that job when the user reduces
10 that pressure on the trigger.

11 Q. So in an AR-15, the user must modulate the amount
12 of pressure being asserted on the trigger shoe; is that
13 correct?

14 A. Yes, it is.

15 Q. In an FRT-15, does the user need to modulate the
16 amount of pressure asserted on the trigger?

17 A. No. They only need to maintain the amount of
18 weight that they did when they first initiated the sequence.

19 Q. On an M16, does a user need to modulate the amount
20 of force asserted on a trigger?

21 A. No, they do not. It's the same. They only need
22 to maintain the amount of pressure caused to initially start
23 the sequence.

24 Q. Turning now to the very next page in your report.
25 Again, looking at the image on the right, titled FRT-15. I

1 think this shows graphically what we were just talking
2 through, but could you explain what is going on in the image
3 here?

4 A. Yeah. What we're seeing here is the bolt carrier
5 acting on the hammer, which is now acting on the trigger.
6 The red arrow is showing that the trigger is being forcibly
7 pressed forward. The purple arrow is showing the user just
8 maintaining that pressure.

9 The square on the left side of the image is
10 showing the sear surface on the top rear of the trigger
11 interacting with the locking bar. And the square on the
12 right side of the image is showing the primary sear of the
13 trigger interacting with the hammer.

14 Q. And to be clear, the shooter is still exerting
15 rearward pressure on the trigger shoe?

16 A. Yes, that's correct.

17 Q. The trigger shoe is nonetheless overcoming that
18 rearward pressure by the mechanical function of the firearm?

19 A. That's correct. As I said, the internal mechanism
20 of it is designed so that it will automatically overcome the
21 user's input.

22 Q. Turning to the next page in your report. Still
23 the image on the right.

24 This now shows the bolt carrier group moving
25 forward; is that correct?

1 A. Yes, it is.

2 Q. But has the bolt carrier group reached its forward
3 motion point in this image?

4 A. No, it has not. What we see here is the moment
5 before the bolt is in full battery and fully locked.

6 Q. Is the weapon safe to fire at this point in time?

7 A. No, it's not.

8 Q. Why not?

9 A. You have three possible outcomes that could happen
10 if the weapon were to be fired right now. The first is that
11 the hammer strikes the firing pin and the round does not
12 detonate. At that point, you would have a failure of fire
13 malfunction that the user would have to manually clear.

14 The other option is that the hammer falls and
15 strikes the firing pin with enough force to ignite it, and
16 the bolt is locked up just enough so that it can contain the
17 pressure, at which point the weapon will fire automatically.

18 And then, the last possible outcome is it ignites
19 the round before the locking loads are fully engaged to
20 contain the pressure. And all of that pressure that we
21 talked about earlier gets vented out into the atmosphere and
22 will typically damage the firearm, or possibly worse, hurt
23 the user.

24 Q. Well, are those three malfunctions in firearms
25 intended to operate in that way?

1 A. That's correct. All three of those options are
2 undesirable.

3 Q. And how does the FRT-15 avoid any of those three
4 undesirable outcomes?

5 A. By including a timing mechanism which retains the
6 hammer.

7 Q. And in this image, what is the timing mechanism?

8 A. The locking bar interacting with the trigger which
9 is interacting with the hammer.

10 Q. And what will happen in the immediate next instant
11 after this image is taken?

12 A. The bolt will come to its foremost point. It will
13 be fully locked. And at the same exact time, the trip
14 surface on the bolt carrier group will interact with the top
15 of the locking bar pushing it forward.

16 That pushes the lower portion of the locking bar
17 rearwards, away from the trigger. So then the trigger will
18 move rearwards and disengage from the hammer and the hammer
19 will fall.

20 Q. And when the hammer falls, the cycle -- the weapon
21 will fire, and the cycle will continue?

22 A. Yes, the cycle will continue.

23 Q. And during that series of events that you just
24 described, does the shooter do anything beyond maintaining
25 constant rearward pressure on the trigger shoe?

1 A. No. But as I said, the only thing the shooter has
2 to do here is maintain that status of just holding the
3 trigger rearward.

4 Q. And the weapon will continue to fire?

5 A. Yes, that's correct. The internal mechanism of it
6 is designed in that manner.

7 Q. I would like to walk through that process on
8 cutaway FRT-15. I will walk that up to you after giving
9 plaintiffs' counsel a chance to look at it.

10 Can you explain for the Court what it is I just
11 handed you?

12 A. Yes. Here we have a semiautomatic AR-15-type
13 receiver equipped with an FRT-15.

14 Q. And where in the firing cycle is the cutaway?

15 A. This is prior to the initiation of the firing
16 sequence. So it's in the ready to fire.

17 Q. And what will the shooter have to do to fire it?

18 A. Place their finger on the trigger, and then apply
19 rearward pressure to the trigger.

20 Q. Can you show the Court what will happen when that
21 rearward pressure is placed on the trigger?

22 A. Sure. So with this system, the locking bar is
23 always engaged. When the bolt carrier is fully forward, it
24 will always be acting on this. So the only thing the user
25 has to do here is apply rearward pressure to the trigger and

1 it will initiate the sequence.

2 Q. The bolt carrier group, which again is not part of
3 this cutaway, is going to then move backwards after the
4 firing pin has been struck; is that correct?

5 A. Yes, it is.

6 Q. Can you show, using your finger as a stand-in for
7 the bolt carrier group, what will happen when that takes
8 place?

9 A. Sure.

10 You can see the hammer, you can see the top of the
11 trigger here, and the hammer will come in contact with the
12 top of the trigger. At what point the trigger will be
13 pushed forward against my rearward pressure. You hear that
14 click. It's engaging with the locking bar at that point.
15 So now I am still holding rearward pressure and it's
16 maintaining its status here.

17 Q. And now the bolt carrier group is going to reach
18 its most rearward point and start moving forward; is that
19 correct?

20 A. Yes, it is.

21 Q. Assuming the shooter is maintaining rearward
22 pressure on the trigger, what's going to happen as the bolt
23 carrier group moves forward?

24 A. It will contact the top of the locking bar,
25 pushing it away from the trigger.

1 Q. And using your finger, can you show the Court what
2 happens as the bolt carrier moves forward?

3 A. Sure.

4 It will push this, and the hammer falls.

5 Q. And to be clear, the shooter did not do anything
6 beyond maintaining constant rearward pressure on the trigger
7 shoe for that process to happen; is that correct?

8 A. That is correct. The only thing I did was
9 maintain that pressure on the trigger.

10 Q. The trigger shoe does, to be clear, move back and
11 forth, right?

12 A. Yes, it does.

13 Q. Why is that not relevant to your classification of
14 the FRT-15 as a machinegun?

15 A. Because, at that point, the trigger is doing a
16 different job. It's timing the weapon. It's being used to
17 retain the hammer until such a point where the sequence can
18 be continued automatically, based on the internal mechanics
19 of the entire system.

20 The purpose of the hammer or the trigger is to
21 initiate the firing sequence. You are only doing that one
22 time with this system. After that, you are just continuing
23 it by maintaining that pressure.

24 Q. Put slightly differently, what does the shooter
25 have to do for an AR-15 to stop firing after the initial

1 round has been fired?

2 A. The only thing the user has to do to have the
3 sequence stop in a standard semiautomatic is just maintain
4 the pressure on the trigger.

5 Q. And what does a shooter have to do to stop the
6 firing sequence in an M16 machinegun?

7 A. They have to reduce pressure on the trigger.

8 Q. What does the shooter have to do to stop the
9 firing sequence in an FRT-15?

10 A. They have to reduce pressure on the trigger.

11 Q. In an M16 and FRT-15, if pressure is not reduced
12 on the trigger, will the weapon continue to fire?

13 A. Yes, it will.

14 Q. In an AR-15, if pressure is reduced on the
15 trigger, will the weapon continue to fire?

16 A. No, it will not.

17 Q. In an AR-15, if pressure is maintained on the
18 trigger, will it continue to fire?

19 A. No, it will not.

20 Q. Very briefly. Did your classification analysis
21 rely on the regulation 27 CFR, Section 479.11?

22 A. No, it does not.

23 Q. What definition of a machinegun did you apply in
24 your classification?

25 A. The statutory definition of the machinegun is

1 found in the National Firearms Act.

2 Q. And what is the statutory definition of a
3 machinegun? It's at, I think, page one of your report, but
4 you probably know it by heart at this point.

5 A. It's any weapon which shoots automatically more
6 than one shot without manual reloading by a single function
7 of the trigger.

8 Q. And when you are applying that statutory
9 definition of a machinegun to a sample sent to you, what is
10 the relevant function of the trigger?

11 A. To initiate the firing sequence.

12 Q. If function is defined more broadly to encompass
13 any purpose the trigger serves beyond just initiating the
14 firing sequence, are there firearms for which the trigger
15 performs multiple functions to fire even one single shot?

16 A. Yes, there are. A classic example of this would
17 be double-action revolvers. Where one pull of the trigger
18 both cocks the firing mechanism and initiates the sequence.
19 A more modern example of that double action would be a
20 Glock-type pistol.

21 Q. What functions does the trigger perform on a
22 Glock-type pistol.

23 A. For every time that the trigger is pulled on a
24 Glock-type pistol, the trigger actually does four functions.
25 It disengages the firing pin safety. It disengages the

1 drop-safety mechanism. It cocks the firing pin. And it
2 also initiates the firing sequence.

3 Q. Can a Glock be configured to fire automatically?

4 A. Yes, it can.

5 Q. And how does one do that?

6 A. The most common way is by a machinegun conversion
7 device known as a Glock switch or a Glock chip. They
8 replace the slide cover plate on a Glock pistol and allow it
9 to shoot automatically.

10 Q. When a Glock has been configured with a Glock
11 switch, does the trigger still perform all four functions
12 that you just described each time it is pulled?

13 A. Yes, it does. On a Glock, whether it does or does
14 not have a machinegun conversion device installed, every
15 time the trigger is pulled, it does and completes all of
16 those four functions.

17 Q. Are you aware of any dispute as to whether a Glock
18 switch creates a machinegun for purposes of this statutory
19 definition of a machinegun?

20 A. No, I'm not.

21 Q. And it does create a machinegun?

22 A. Yes, it does.

23 Q. If function were to encompass any purpose a
24 trigger serves beyond just initiating the firing sequence,
25 does a trigger on a Glock configured with a Glock switch

1 perform multiple functions to fire even one single shot?

2 A. Yes, it does. As I said, every time you pull the
3 trigger on a Glock pistol, it does serve and complete those
4 four functions.

5 Q. And if function is defined to encompass any
6 purpose a trigger serves beyond just initiating the firing
7 sequence, does a trigger on a Glock configured with a Glock
8 switch perform multiple functions to fire more than one
9 shot?

10 A. Yes, it does.

11 Q. Are there firearms that are classified as
12 machineguns for which the trigger moves more than once
13 during a single firing sequence?

14 A. Yes. The two most notable machineguns that do
15 that would be the Steyr AUG and the FN P90.

16 Q. Are you aware of any dispute as to whether the FN
17 P90 or the Steyr AUG is properly classified as a machinegun?

18 A. No, I'm not.

19 Q. And can you describe for the Court how the trigger
20 will move more than once during a single firing sequence in
21 those two systems?

22 A. Sure.

23 Both of the systems are designed with what they
24 call a progressive trigger. So it allows the user to select
25 the fire mode based upon how much they pull the trigger. So

1 both systems start in the semiautomatic position.

2 And as you pull the trigger, let's say, halfway,
3 it releases the hammer and fires the weapon. At that point,
4 the disconnecter retains it. You can release the hammer --
5 or the trigger, I'm sorry, and pull it again to fire
6 subsequent rounds. And you can continuously do that to fire
7 semiautomatically.

8 But if you want to fire automatically, you have to
9 first pull the trigger back, it will initiate the firing
10 sequence in the semiautomatic position. And then, as you
11 continue to move the trigger rearwards, it disengages the
12 primary sear and the disconnecter from the fire components
13 of the system. And the only thing at play there then is the
14 timing mechanism of the sear.

15 So in both systems they start in semiautomatic.
16 As you pull the trigger, it initiates the sequence. And as
17 you continue to pull the trigger, it then selects the
18 automatic function of the firearm.

19 Q. Did you hear Mr. O'Kelly's testimony earlier today
20 that, for purposes of hammer-fire weapons, the relevant
21 function of the trigger is to release the hammer?

22 A. Yes, I did.

23 Q. Do you agree with that statement?

24 A. I do not agree with that statement.

25 Q. Could you explain for the Court why you disagree

1 with that definition of the function of the trigger?

2 A. Sure.

3 That function of the trigger only applies to
4 hammer-fire weapons. And then, that term has to then be
5 redefined for different operating systems, such as striker
6 fires, or open bolts as Mr. O'Kelly said earlier.

7 But you have to redefine that term every time you
8 look at a different operating system. Whereas, saying that
9 the function of the trigger is to initiate the firing
10 sequence is applicable to all firearms universally,
11 regardless of the operating system of it.

12 Q. Did anything you hear from Mr. O'Kelly today
13 change your conclusion that an FRT-15 is a machinegun?

14 A. No.

15 MR. RESAR: Defendants will reserve the rest of
16 their time for redirect and oral argument.

17 THE COURT: Okay. Well, we need to take a break
18 so our court reporter can have a break. So why don't we
19 take about a 10-minute break and get started back up at
20 11:00.

21 (The proceedings adjourned at 10:51 a.m.)

22 (Court reconvened.)

23 THE COURT SECURITY OFFICER: All rise.

24 THE COURT: Please be seated. Please be seated.

25 Yeah, everybody else be seated. We need to keep going.

1 MR. COLUMBO: Your Honor, for timekeeping
2 purposes, by our count, the plaintiffs have used about 35
3 minutes or so of our time.

4 THE COURT: Great. Sounds good.

5 CROSS-EXAMINATION

6 (BY MR. COLUMBO:)

7 Q. Good morning, Mr. Ciravolo.

8 A. Good morning.

9 Q. Isn't it true that when the United States Alcohol,
10 Tobacco, Firearms, and Explosives classifies any device as a
11 machinegun, that classification is the opinion of the ATF
12 and not solely the opinion of the individual FEO who
13 examined the gun?

14 A. I disagree with that. Myself, I wouldn't write a
15 report classifying something that I don't agree with. So I
16 am not aware of any Firearms Enforcement Officer that's been
17 instructed to classify something that they don't believe in
18 the classification themselves.

19 Q. Well, if you did think that an FRT-15 was not a
20 machinegun, but your peer and managers determined that it
21 was a machinegun, their opinion would -- their opinion and
22 not yours would determine the opinion of the ATF, wouldn't
23 it?

24 A. I'm not sure. I am unfamiliar with any scenario
25 where that's actually happened.

1 Q. That wasn't my question though.

2 A. I don't know. That's a hypothetical that I'm not
3 sure what would happen there.

4 THE COURT: Well, is it the case that, if the ATF
5 classified something one way, it would be the ATF's decision
6 to classify it that way? You may not be the person to
7 testify to support it.

8 THE WITNESS: Yes.

9 THE COURT: I got it.

10 (BY MR. COLUMBO:)

11 Q. Okay. And you are aware that the ATF has
12 published a public statement of the opinion that some
13 FRT-15s aren't machineguns?

14 A. Yes.

15 Q. And to write your report explaining ATF's opinion
16 on the FRT-15, that it was a machinegun, you consulted with
17 other FEOs, did you not?

18 A. Yes, that's correct.

19 Q. And, in fact, you copied prior reports to use as
20 content for your reports?

21 A. Yes. We use the same language in order to
22 maintain consistency.

23 Q. Consistency of the ATF's opinion?

24 A. Or the technical aspect of how something works
25 too. If something is written that accurately describes how

1 something works, there's no need to reinvent the wheel and
2 start a whole new page or paragraph writing it differently,
3 if what's already said is accurate and factually correct.

4 Q. And your report was reviewed by agency lawyers?

5 A. Yes, that's correct.

6 Q. And some of the sections in your report were in
7 fact written by them?

8 A. Yes, that's correct.

9 Q. In fact, you're appearing today solely in your
10 capacity as an ATF employee, are you not?

11 A. Yes, I am.

12 Q. And like the report about the FRT-15 that you
13 signed, along with your manager after peer review and lawyer
14 review and input, your testimony today will constitute and
15 explain the ATF's position in this case; is that right?

16 A. I believe so.

17 Q. You've testified that your opinion is based solely
18 on the statutory definition, right?

19 A. Yes, that's correct.

20 Q. That statute, in any meaningful way, hasn't
21 changed in about the last 90 years, has it?

22 A. That's correct.

23 Q. Okay. Would you agree that the ATF for many years
24 concluded that some bump stocks were not machineguns?

25 A. Yes, that's correct.

1 Q. And then, just a few years ago, it passed a rule
2 saying that they were machineguns?

3 A. Correct.

4 Q. And an ATF FEO testified in a case called Cargill
5 that it was his opinion that bump stocks were, in fact,
6 machineguns?

7 A. I believe so.

8 Q. But that the Fifth Circuit disagreed and concluded
9 that they were not?

10 A. That's correct.

11 Q. Would you agree that the statutory definition of a
12 machinegun does not define a machinegun based on its rate of
13 fire?

14 A. That is correct.

15 Q. Accordingly, can we agree that the rate of fire in
16 an AR-15 equipped with an FRT-15 has no bearing on whether
17 or not it's a machinegun?

18 A. I agree.

19 Q. Isn't it also true that, if a gun fires only one
20 shot with each function of a trigger, it is, by definition,
21 not a machinegun, right?

22 A. That is correct.

23 Q. Is it fair to say that your conclusion that the
24 FRT-15 is a machinegun depends on the notion that a single
25 function of the trigger means a pull of the trigger?

1 A. No. It relies on the function of the trigger
2 being to initiate a firing sequence. The user causes that
3 function to happen by pulling it.

4 So a lot of times that's why you will see function
5 and pull will kind of be synonymous with each other, because
6 by pulling the trigger is how the user causes it to
7 function.

8 But the function of the trigger is focused on the
9 mechanical job that the trigger's supposed to do, which is
10 initiate the firing sequence. And on a firearm equipped
11 with FRT-15, that system only needs to be initiated one
12 time.

13 Q. So in saying that the single function of the
14 trigger depends on the operation of the trigger? I forget
15 how you phrased it. How did you phrase that?

16 A. The mechanical function of it is what the function
17 is.

18 Q. The mechanical function of the trigger is the
19 single function of the trigger, right?

20 So it's not what the shooter is doing?

21 A. That's correct. It's what job the trigger is
22 doing. The shooter has to interact with it in some way
23 because the trigger is the main component that goes between
24 the user and the firearm. So the user has to cause that
25 function to happen somehow. As we all know, guns don't just

1 go off on their own. Something has to initiate the firing
2 sequence, and that's where the human element comes in.

3 Q. So would you then agree that whether or not a
4 device is a machinegun does not determine about the degree
5 of pressure a shooter uses on the trigger?

6 A. That's correct. It's based upon what functions
7 the trigger does, not how much pressure the user needs to
8 start those functions.

9 Q. So I want to just clarify something. You wrote
10 your report that you were just using in your testimony in
11 about, was it April of this year?

12 A. Yes, I believe so.

13 Q. Do you still have your report up there with you?

14 A. Yes, I do.

15 Q. Okay. If you just go to the second page of your
16 report. Let me know when you get there.

17 A. Okay.

18 Q. So just above the section entitled "Findings,"
19 there is a paragraph that begins with the word "finally." Do
20 you see that?

21 A. Yes.

22 Q. Is it fair to characterize that paragraph
23 describes the definition of a machinegun as found in 27 CFR
24 478.11, 479.11?

25 A. Yes, that's correct.

1 Q. Now, in your direct testimony did I hear you
2 testify that the regulatory definition of a machinegun plays
3 no bearing on your opinion today?

4 A. That's correct. My classification is not based on
5 the regulatory definition, but in fact the statutory
6 definition where the single function of the trigger only
7 needs to be done one time. So that's where the
8 classification is based off of.

9 Q. Okay. Now, in that paragraph is it accurate to
10 say that the paragraph quotes the regulatory definition to
11 say a single function of the trigger means a single pull of
12 the trigger and analogous motions?

13 A. That's correct.

14 Q. So you are not using that definition for today's
15 purposes?

16 A. That's correct. I believe that the single
17 function of the trigger means single pull of the trigger is
18 speaking of how the user interacts with the trigger to cause
19 it to function.

20 Q. Okay. So whether a user's pressure on the trigger
21 is constant or not, then is not determinative of whether or
22 not a device is a machinegun?

23 A. That's correct.

24 THE COURT: So you would change, if you were
25 writing this today, you would change this paragraph, in that

1 you would say, single function of the trigger is how the
2 shooter would interact with the trigger? You would delete
3 the word "means" from that?

4 THE WITNESS: Yes, that's correct.

5 THE COURT: Okay.

6 (BY MR. COLUMBO:)

7 Q. I have to skip a few questions. You threw me a
8 curveball there.

9 So, similarly, a continuous pull of a trigger is
10 not something a statute uses to decide whether or not
11 something is or is not a trigger?

12 A. That's correct. The statute speaks of what the
13 function of the trigger is.

14 Q. In any event, even that phrase "continuous pull of
15 the trigger" is not even in the regulation anyway, right?

16 A. Correct.

17 Q. Okay. So, well, then would you agree with me that
18 your testimony is not that a trigger requires a gun user to
19 lessen their pressure on the trigger and release it in order
20 to fire one shot?

21 A. I'm sorry, could you state that again?

22 Q. Well, let's try it a different way.

23 Is it your testimony that a single function of the
24 trigger requires the gun user to lessen their pressure on
25 the trigger and release it in between shots in order to

1 cause a second shot to be fired?

2 A. In a traditional semiautomatic, that's how the
3 user interacts with the trigger to fire subsequent shots,
4 but the function of the trigger is completed once the
5 initiation of the firing sequence begins. So that is the
6 function of the trigger there when the firing sequence has
7 begun.

8 Q. Okay. So your testimony about lessening the
9 pressure or releasing triggers, you're just describing how a
10 certain kind of trigger works, right?

11 A. Yes.

12 Q. Okay. It's not key to the definition in the
13 statute?

14 A. That is correct.

15 Q. There was brief testimony, just to put a bow on
16 this, there was brief testimony about a binary trigger which
17 I believe you testified fires a shot when you move the
18 trigger rearward and again when you release it; is that
19 right?

20 A. That's correct. Each time the user causes the
21 trigger to move, whether that's for or aft, it's initiating
22 a new firing sequence.

23 Q. So in a way, the fact that the ATF says that a
24 binary trigger is not a machinegun proves the point that
25 releasing the trigger is part -- you can only release the

1 trigger once or let me say this again. That releasing the
2 trigger is part of one function of the trigger?

3 A. I'm not sure I understand what you're saying. I
4 don't believe that releasing the trigger is the function of
5 the trigger in a standard semiautomatic.

6 Because, on a standard semiautomatic, you are not
7 initiating the firing sequence a subsequent time by
8 releasing it. In a binary trigger, the mechanism is
9 designed so that a firing sequence can be initiated upon the
10 release.

11 So based upon the mechanical action of how a
12 binary trigger works, yes, you are initiating a firing
13 sequence when you release it. But on a standard
14 semiautomatic, you are not releasing the trigger to initiate
15 a firing sequence. You are releasing the trigger to reset
16 the trigger.

17 Q. So to complete a single function of the trigger
18 does not require releasing the trigger then?

19 A. That's correct. If it's just to initiate the
20 firing sequence, yes.

21 Q. Okay. When in a hammer-fired weapon, like an
22 AR-15, when a person pulls the trigger, it releases the
23 hammer, right?

24 A. Yes, that's correct.

25 Q. The hammer then impacts the cartridge, and the

1 bullet is fired from the gun, right?

2 A. Yes.

3 Q. The hammer then returns to be engaged by the
4 trigger sear surface, right?

5 A. That's only after the user manually reduces
6 pressure. The mechanism is designed so that the
7 disconnecter will capture it and hold it there indefinitely.

8 So the step of it returning to the trigger is only
9 done after the user takes manual action. The mechanism is
10 not designed to do that.

11 Q. Okay. And in an FRT-15 though, the trigger is
12 reset where the trigger reengages the hammer, correct?

13 A. Yes, the internal mechanism of the system is
14 designed to do that automatically for you.

15 Q. There comes a point in time when the trigger is
16 held in place, in its forward reset position, by the locking
17 bar, right?

18 A. Yes.

19 Q. At that point in time, when the trigger has been
20 forced forward and it's held in place by the locking bar,
21 the user can't pull the trigger rearwards, right?

22 A. They can pull the trigger rearwards. They cannot
23 move the trigger rearwards. I can apply pressure to the
24 trigger and put weight on the trigger, but the trigger will
25 not move. But, yes, I can pull the trigger at that point.

1 Q. It just won't move?

2 A. That's correct.

3 Q. Would you agree now, as you wrote in your report
4 that, "It is important to note, at this moment the hammer is
5 solely retained by the trigger sear surface. The trigger
6 still being pulled rearwards by the shooter is unable to
7 disengage from the hammer because the locking bar prevents
8 the trigger from dropping out of engagement with the
9 hammer"?

10 A. Yes, that's correct. And it's describing the
11 timing function of the system.

12 Q. And that's what we were just talking about. At
13 that point in time, you can't move the trigger even rearward
14 if you wanted to?

15 A. That's correct, because it would be unsafe to do
16 so.

17 Q. Well, you can't, because it's stopping you, right?

18 A. Yes, it's stopped because it's unsafe to do so.

19 Q. So you physically can't move the trigger back,
20 right?

21 A. Correct.

22 Q. Meaning that, you can't cause the gun to fire at
23 that moment, right?

24 A. Yes. You can't continue the sequence in that
25 moment.

1 Q. Subsequently, after the locking bar releases the
2 trigger, a user can pull the trigger rearward causing the
3 trigger to release the hammer which hits the firing pin and
4 causes the weapon to fire again, right?

5 A. Yes, the user can continue to move the trigger
6 rearward.

7 Q. But for the trigger to release the hammer and for
8 the gun to fire again, that trigger must move rearward?

9 A. Yes, it must.

10 Q. And the only force that moves that trigger
11 rearward comes from the user's finger, right?

12 A. Yes, that's correct.

13 Q. So just to sum up, for every shot fired by an
14 FRT-15, the trigger must move rearward to release the
15 hammer?

16 A. Yes, that's correct.

17 Q. Let's talk about an M16 for a moment. An M16
18 machinegun has a part called an auto sear, correct?

19 A. Yes.

20 Q. After a trigger initially moves and releases the
21 hammer, the auto sear can then repeatedly release the hammer
22 to fire multiple shots without the trigger moving again,
23 correct?

24 A. Yes, that's correct.

25 Q. And that's different than an FRT-15, correct,

1 where the trigger movement is required for every shot fired?

2 A. Yes, that's correct.

3 Q. Indeed, in an FRT-15, the hammer is captured by
4 the trigger sear for each round fired?

5 A. Yes, that's true.

6 Q. But an M16, the hammer is not captured by the
7 trigger sear for each round fired?

8 A. That's correct.

9 Q. That means if you load and fire five rounds from
10 an FRT-15, the trigger must move to its most rearward
11 position five times, right?

12 A. Yes.

13 Q. Looking at it another way, if you loaded and fired
14 five rounds from an FRT-15, the trigger sear surface must
15 engage the hammer five times, yes?

16 A. Yes, that's correct.

17 Q. And the trigger will reset, I guess, four times?

18 A. Yes, it will.

19 Q. But if you load and fire five rounds from an M16
20 machinegun while the trigger is held rearward just once,
21 without being released, you can fire all five rounds; is
22 that right?

23 A. Correct. In both systems you only have to
24 initiate that sequence one time, but with one pull.

25 Q. We just talked about the FRT-15. But in an M16,

1 you hold the trigger rearwards and keep it there, right?

2 A. Yes. In an M16, the trigger does not move after
3 it initiates the sequence.

4 Q. And the trigger doesn't reset?

5 A. That's correct.

6 Q. So if you load and fire five rounds from an M16
7 machinegun, the trigger sear surface engages the hammer only
8 once then, right?

9 A. Yes.

10 Q. If we take an FRT-15 and we move the trigger to
11 its most rearward position and hold it there and not allow
12 it to move forward to reset, you would agree that it would
13 malfunction, right?

14 A. Yes, that's correct. The system is not designed
15 in that manner. It's designed to move.

16 Q. And it would only fire one shot then?

17 A. If you malfunction it? Yes, it would only fire
18 one shot.

19 Q. But if you did the same thing with an M16, it
20 would fire all of its rounds, right?

21 A. That's correct.

22 Q. Is ease of overcoming the force of a trigger
23 that's being reset, whether by a spring or a mechanism like
24 the FRT-15, is that in the definition of a machinegun in the
25 statute?

1 A. No, it's not written in there.

2 Q. Is ease of use of a trigger in the definition of a
3 machinegun?

4 A. No, it's not.

5 Q. If you were to strengthen the force of the spring,
6 use a stronger spring in an AR-15, could that make the AR-15
7 into a machinegun?

8 A. Strengthen the force of the trigger spring?

9 Q. That resets the trigger, yes.

10 Swap out the little spring for a stronger one?

11 A. Possibly. If the spring were to not allow the
12 user to hold the trigger to the rear, and it would overcome
13 them in some manner, it might be possible. I don't know.

14 Q. So your testimony is that it's possible to turn
15 the AR-15 into a machinegun just by using a stronger spring?

16 A. It's possible. I mean, you can convert an AR-15
17 into a machinegun by removing a spring. So it's logical
18 that maybe by adding one you could have the same effect. I
19 don't know.

20 Q. You had some testimony where you questioned
21 Mr. O'Kelley's definition of the function of the trigger
22 being to release the hammer, but as it pertains to a
23 hammer-fired weapon, he was correct, right?

24 A. Yes. In a hammer-fired weapon, the trigger does
25 release the hammer, but that is also initiating the firing

1 sequence. So I believe both are applicable there. Whereas,
2 saying that it releases the hammer is only relative to that
3 specific category of firearms.

4 Q. And the AR-15 is a hammer-fired weapon?

5 A. Yes, that's correct.

6 Q. As is an FRT-15?

7 A. Yes.

8 Q. As is an M16?

9 A. Yes.

10 MR. COLUMBO: No, no further questions.

11 MR. RESAR: Thank you. Just a few questions.

12 REDIRECT EXAMINATION

13 (BY MR. RESAR:)

14 Q. You were asked about automatic sear and how many
15 times it engages in an M16.

16 Just to be clear, what does an automatic sear do?

17 A. It times the weapon. So it retains the fire
18 controlled components to the point where it's safe for them
19 to be released again, and then it will be released by
20 mechanical function of the weapon.

21 Q. So during a firing cycle in an M16, does a timing
22 mechanism restrain the hammer temporarily?

23 A. Yes.

24 Q. In an FRT-15, does a timing mechanism indirectly
25 restrain the hammer during the firing cycle?

1 A. Yes, it does.

2 Q. Does it matter, for purposes of classification of
3 a firearm as a machinegun, whether there's an intermediary
4 piece between the timing mechanism and the hammer?

5 A. No, it does not. The only thing that matters is
6 how many times the firing sequence needs to be initiated to
7 effect automatic fire. And with the FRT-15, the sequence
8 only needs to be initiated one time and the weapon will
9 continue to fire based on the mechanical principle of its
10 operation.

11 Q. You were just asked about the trigger in an FRT-15
12 jamming essentially when you pull so hard that you override
13 the forced reset. Do you recall those questions?

14 A. Yes.

15 Q. If an individual is capable of jamming an FRT-15
16 by overcoming the forced reset, and then releases their
17 finger from the trigger, how many shots will be released
18 from the FRT-15?

19 A. It depends on how much pressure is reduced. If
20 the user is holding that trigger so much that it causes a
21 mechanical bind and a malfunction and the user just
22 completely lets go of the trigger, I don't think it would
23 fire any rounds. But if you just reduce that pressure so
24 you're not causing that bind to happen, it will continue to
25 fire the rounds, however many is in the magazine.

1 MR. RESAR: No further questions.

2 THE COURT: Okay. You may step down.

3 MR. COLUMBO: We would like to call Mr. O'Kelly
4 for brief rebuttal.

5 THE COURT: Thank you. You may step down.

6 THE WITNESS: May I take these machineguns with
7 me?

8 THE COURT: Yes.

9 MR. COLUMBO: We actually would like Mr. O'Kelly
10 to look at those.

11 THE WITNESS: Yeah. Sure.

12 THE COURT: Okay. You remain under oath, sir.

13 THE WITNESS: Yes, sir.

14 REBUTTAL EXAMINATION

15 (BY MR. COLUMBO:)

16 Q. Mr. O'Kelly, to pick up where Mr. Ciravolo left
17 off. Mr. Ciravolo testified about the importance of timing
18 mechanism and various triggers in his view as to whether or
19 not they're machineguns.

20 Does definition of a trigger include anything
21 about timing mechanisms?

22 A. No. This whole issue of timing has been
23 intentionally misleading from what I'm seeing. I keep
24 hearing that this assertion that an auto sear is for timing
25 and because --

1 THE COURT: Speak up just a bit more.

2 THE WITNESS: Thank you, your Honor.

3 All self-loading firearms are designed such that
4 timing is critical. For instance, a firearm doesn't fire
5 until such time as the trigger is pulled to release the
6 hammer. It doesn't fire by itself.

7 Once it does fire, it is designed so that timing
8 is critical such that it doesn't unlock. The bolt does not
9 become disengaged from the barrel until such time as the
10 bullet has left the barrel.

11 Otherwise, as he testified, that chamber pressure
12 would be vented into the breach area and injure the shooter
13 or destroy the gun. At that point, the hammer is recoiled,
14 and not until then. So timing is an issue.

15 I mean, timing is an issue for every step of the
16 cycle of operation, all eight steps, they occur at their
17 given time. So it's not like timing only happens in this
18 one situation.

19 And then this issue of, you know, he made the
20 statement that the disconnector serves to stop the cycle of
21 operation. That's completely false.

22 He either doesn't know what he's talking about, or
23 he's trying to mislead the Court. Once the disconnector
24 captures the hammer in an AR-15, the step of extraction
25 continues. The step of ejection continues. The step of

1 feeding continues. The step of chambering continues. And
2 the step of locking continues.

3 How he thinks it stops the cycle of operation is
4 beyond me. And then there's this misleading habit of using
5 continually the term "firing sequence." ATF has admitted
6 that there is the cycle of operation. The cycle of
7 operation, they admit, has eight steps.

8 They admit what these eight steps are. And that
9 these eight steps occur in an order dependent on the design
10 of the gun being discussed. Some of the steps occur
11 simultaneously with others, depending on the design of the
12 gun.

13 But rather than refer to cycle of operation and
14 referring to initiating the cycle of operation and the fact
15 that a cycle of operation is eight steps occurring one time
16 to fire one shot, even in a machinegun, even in an M16, if
17 you fire 10 shots out of a machinegun in a continuous burst,
18 the cycle of operation has occurred 10 times. Ten times
19 you've had each one of those steps occur in their given
20 order, but they like to cloud the waters using this phrase.

21 MR. CLENDENEN: Your Honor, can we object? There
22 hasn't been a question in a long time. The witness is just
23 kind of rambling.

24 THE COURT: Ask a follow-up question.

25 ///

1 (BY MR. COLUMBO:)

2 Q. Mr. O'Kelly, you heard the testimony about the
3 single function of the trigger as it relates to the
4 initiation of the firing sequence or the cycle of operation.
5 Can you clarify what your position is?

6 A. Again, specifically about the single function of
7 the trigger?

8 Q. Yeah.

9 A. Okay. As it fits into the cycle of operation?

10 Q. Yes.

11 A. Okay. Well, again, when the shooter moves the
12 trigger to the rear enough to disengage the trigger from the
13 hammer, the trigger is performing a function. It's a single
14 function. As a result of that single function, one single
15 shot occurs, that being firing when the hammer strikes the
16 firing pin.

17 Firing is the first step of the eight steps of the
18 cycle of operation. Following that step, once the bullet
19 has left the barrel and the pressure has reduced to a safe
20 level, the next step of the cycle of operation occurs, that
21 being the unlocking. The separation of the bolt from the
22 barrel so that no pressure injures the shooter.

23 The next step of the cycle is extraction. The
24 physical pulling of the empty cartridge case out of the
25 chamber. The next step is ejection. Again, timing is

1 tantamount here, because ejection is when that spent case is
2 thrown clear of the firearm. It, of course, can't happen
3 until it's been extracted. So again, timing is everything.

4 The next step is cocking. The rearward moving
5 bolt carrier serves to recock the hammer to the point where
6 it reengages with the trigger. Once the bolt carrier has
7 reached its fully rearward position, it starts moving
8 forward again under spring pressure. While it's doing so,
9 it is stripping another cartridge out of the magazine. And
10 that is the step called feeding.

11 The next step is called chambering, when it
12 continues to seat that cartridge in the chamber of the
13 firearm.

14 And the next step is locking when the bolt and the
15 barrel become physically interlocked again for the purposes
16 of safety. Only then has that cycle of operation completed,
17 and you still only have one shot fired. And it's now safe
18 if you wish to shoot another shot, start it over again.

19 But this firing sequence, what are we talking
20 about? Are we talking about just another way to say cycle
21 of operation? Because there's also, you know, the term
22 "string of fire." If you fire seven shots in a row out of a
23 machinegun, a burst of seven shots, that's normally referred
24 to as a string of fire. And in that string of fire, the
25 cycle of operation occurred seven times.

1 When we say "firing sequence," what are we talking
2 about? It's just this vague term that they try to use to
3 cloud the waters, and you are not clear what they are
4 talking about.

5 Q. Does the statutory definition of a
6 machinegun require that a gun have a disconnecter to avoid
7 being a machinegun?

8 A. That was another thing that was ridiculous. I
9 think I may have already mentioned it. He said that the
10 disconnecter serves to stop the cycle of operation.

11 Well, one, the disconnecter grabs the hammer and
12 captures it, the cycle of operation fully continues,
13 extraction continues, cocking continues, ejection continues,
14 feeding, chambering, locking, all continue. Nothing is
15 stopped in the cycle of operation by the act of the
16 disconnecter grabbing the hammer. Again, it's --

17 Q. So any gun that does not have a disconnecter is a
18 machinegun or not?

19 A. No. There's no relation between those two ideas.

20 Q. What's the function of an auto sear in an M16?

21 What does it do?

22 A. It does time the gun, but so does every part of a
23 gun, time the gun.

24 Q. What does it do in relation to the trigger?

25 A. It does nothing in relation to the trigger.

1 Q. What causes the trigger in an M16 to be bypassed
2 so that the gun can continue to fire without the trigger
3 functioning?

4 A. The fact is that the M16 is designed such that the
5 trigger only serves to release the hammer for the first shot
6 in a given string. After that, there is a timing that
7 occurs so that the gun does not jam, so that each step of
8 the cycle of operation occurs at its given time.

9 It does that by employing a system where the
10 hammer is caught by the auto sear after each recocking of
11 the hammer and is then -- the hammer is then rereleased by
12 the bolt carrier tripping the auto sear rather than the
13 trigger tripping the hammer. It's just different ways to
14 make something happen.

15 Q. And that process that you just described bypasses
16 the trigger, so it only functions once, even though many
17 shots are fired?

18 A. Yes. The trigger functions one time in a
19 machinegun to initiate that first cycle of operation to fire
20 the first shot. After that, successive shots are effected
21 by the interaction between the bolt carrier, auto sear, and
22 hammer.

23 Q. Is there any equivalent process or mechanism in an
24 FRT-15 that bypasses the trigger to allow the gun to fire
25 without the trigger functioning?

1 A. Absolutely not. I continued to hear him testify
2 about how, you know, single pull, single continuous
3 pressure, that has nothing to do with the statutory
4 definition.

5 There is a single function of the trigger. That
6 being the disengagement of the trigger from the hammer which
7 occurs, by his own testimony, for every shot that is fired
8 by an FRT-15. The trigger is releasing the hammer for each
9 shot and reengaging with the hammer after each shot.

10 Q. Just to conclude, would you just take a few
11 minutes to use the models before you of the M16 and FRT-15
12 to just illustrate the differences you just described in
13 terms --

14 THE COURT: You-all can come up if you need to see
15 it.

16 (BY MR. COLUMBO:)

17 Q. -- to describe the function of the trigger and why
18 one is a machinegun and one isn't?

19 A. Which one would you like first?

20 Q. Start with the M16.

21 A. Okay.

22 THE COURT: Do you want to come up? Just if
23 you-all speak, you just need to speak up good and loud so
24 our court reporter can hear us. If you need to see the
25 demonstration, come on up.

1 MR. CLENDENEN: Sorry, which weapon is this?

2 THE COURT: This is the M16.

3 THE WITNESS: Okay. Here we have, of course, the
4 hammer, the auto sear, when the bolt carrier pushes the
5 hammer to the rear. The hammer in an M16 has this extra
6 tang or hook on it which is not visible, doesn't exist on
7 the hammer of an AR-15. It exists for the purpose of
8 interacting with the auto sear.

9 So as the bolt carrier pushes the hammer back, it
10 catches on the lower end of the auto sear and remains there
11 while the bolt carrier continues its rearward motion and
12 continues its forward motion.

13 Once it's, again, in battery with a new-chambered
14 round, if the shooter is holding the trigger to the rear,
15 once the bolt carrier comes fully forward, that rear surface
16 of it will hit that pin and release the hammer and fire
17 continuous shots, but the trigger is out of play.

18 Whereas, with the FRT-15, the bolt comes to the
19 rear, recocks the hammer. Once it does so, it forces the
20 trigger forward, forces the trigger and the shooter's finger
21 forward. You actually see that movement in the videos.

22 And once the bolt carrier goes back in the battery
23 chambering another round and is in battery and is safe to
24 fire another round, at that point the trigger is forward,
25 the shooter's finger, of course, is forward because it was

1 forced there.

2 And if the shooter wants to fire another shot,
3 they have to pull the trigger to the rear again and make the
4 hammer release and fire it.

5 Because the shooter is keeping pressure on the
6 trigger, once the bolt carrier has moved the locking bar
7 away from the trigger, then it's very easy for them to pull
8 that trigger again.

9 It's a splitting-hairs issue at this point. This
10 constant pressure or not constant pressure. The point is,
11 the shooter is again pulling rearward and causing the same
12 functions to occur that he did the first time. He's moving
13 it to the rear physically, intentionally. He's causing a
14 disengagement between the trigger and hammer to fire another
15 shot. It doesn't happen automatically. That's basically
16 it.

17 (BY MR. COLUMBO:)

18 Q. Mr. O'Kelly, is there anything in what you've
19 heard from the testimony of Mr. Ciravolo that causes you to
20 question or doubt your conclusion that the FRT-15 is not a
21 machinegun?

22 A. Absolutely is not a machinegun.

23 MR. COLUMBO: No further questions.

24 ///

25 ///

1 SURREBUTTAL EXAMINATION

2 (BY MR. CLENDENEN:)

3 Q. I believe, I just want to make sure that you
4 testified that the single, continuous pull or constant
5 pressure is irrelevant to the statutory definition of a
6 machinegun; is that right?

7 A. I don't see it anywhere in the definition.

8 Q. Have you read the Cargill decision?

9 A. I'm familiar with it.

10 Q. Have you read the entire thing?

11 A. It's been weeks or months, but, yes.

12 Q. If I may read a couple sentences. This is from 57
13 F.4th, page 463. It says, "An automatic weapon satisfies
14 this requirement because the act of pulling and holding the
15 trigger is one function and that function produces more than
16 one shot. That force must be maintained on the trigger does
17 not change this conclusion."

18 Do you agree with that statement?

19 A. Yes.

20 MR. CLENDENEN: No further questions.

21 MR. LAWKOWSKI: What was that again?

22 MR. CLENDENEN: That was Cargill at page 463.

23 (An off-the-record discussion was had between the
24 attorneys.)

25 MR. COLUMBO: Your Honor, may we have a moment for

1 some concluding statements?

2 THE COURT: We've run out of time. I'm going to
3 give you both a few minutes. I'm sorry, but I've got a long
4 jury trial that I bumped to the afternoon to fit this in.

5 So I can't engage as much as I had hoped, but I
6 will give you both a few minutes to present some summations
7 before we break, but do you have any redirect, wherever we
8 are, in connection with the last question asked of the
9 witness?

10 MR. COLUMBO: I think in terms of talking about
11 Cargill and what it says and what it means, I can do that in
12 my statement.

13 THE COURT: So, no more redirect?

14 MR. COLUMBO: No more redirect.

15 THE WITNESS: Thank you, your Honor.

16 THE COURT: Okay. Since we've run out of time,
17 and you're the movant, you would get rebuttal anyway, so why
18 don't I ask the government to go first and then you can just
19 present and rebut at the same time?

20 MR. COLUMBO: Thank you, your Honor.

21 MR. RESAR: Your Honor, before we start, can I
22 just ask, for timing purposes, how much time you are
23 planning to give us?

24 THE COURT: How much time do you need to present
25 to me?

1 MR. RESAR: I can talk for hours I think on these.

2 THE COURT: About five or 10 minutes?

3 MR. RESAR: Yeah. Okay.

4 THE COURT: Okay.

5 MR. RESAR: Thank you, your Honor.

6 And may it please the Court. I'm briefly going to
7 address the success on the merits, and my colleague, Laura
8 Bakst, with your permission, will address the scope of
9 relief on the preliminary injunction issue.

10 Plaintiffs cannot show likelihood of success on
11 the merits because FRTs are machineguns under 26 U.S.C.
12 Section 5845.

13 The only other federal court to address this
14 question found it highly likely that FRTs are machineguns.
15 That was on a motion for preliminary injunction brought by
16 the government in which the government was required to show
17 likelihood of success on the merits.

18 Plaintiffs bear that burden here, obviously. And
19 they cannot do so because, at most, there's a disagreement
20 between experts, but the mere existence of a disagreement
21 between experts about how an FRT-15 functions is not
22 sufficient to show that plaintiffs are likely to establish
23 that ATF's classification was contrary to law.

24 Just to start with the text of the statute that
25 you've heard today, the question is whether the firearm is

1 capable of shooting automatically more than one shot without
2 manual reloading by a single function of the trigger.

3 The statute, as you've heard, does not define
4 function of the trigger, but the Fifth Circuit has
5 repeatedly held that the trigger is the mechanism used to
6 initiate the firing sequence.

7 That's the definition that Mr. Ciravolo applied in
8 his classification report and legally it's from Jokel, it's
9 from Camp, and it's reiterated by the plurality in Cargill.

10 So the relevant function of the trigger, for
11 purposes of the statutory definition of function of the
12 trigger, is the initiation of the firing sequence.

13 An FRT satisfies this statutory definition because
14 the trigger needs to only initiate the firing sequence once
15 for the weapon to continue to shoot automatically until the
16 shooter acts again on the trigger by releasing rearward
17 pressure.

18 You heard that passage Michael read from the
19 Cargill decision in which the Cargill plurality was clear
20 that holding and maintaining pressure on the trigger creates
21 one function of the trigger. That is how the user engages
22 in one function of the trigger.

23 So once the FRT is subject to constant rearward
24 pressure, just like an M16, it will continue to fire until
25 the user releases that pressure, the firearm exhausts its

1 ammunition supply, or the firearm malfunctions. In that
2 way, an FRT-equipped firearm is simply no different than an
3 M16, and that's by design.

4 As you heard from Mr. Ciravolo today, the FRT-15
5 modifies the design of the standard trigger in an AR-15 in
6 two ways. One, it eliminates the disconnecter. You heard
7 Mr. O'Kelly say that the firing cycle can continue.

8 It's true that there are things happening in the
9 gun after the disconnecter engages the hammer, but the
10 important part of that is the gun can't go off again so long
11 as the firearm -- so long as the disconnecter is engaging
12 the hammer. That's what Mr. Ciravolo testified to today,
13 and that's in his report.

14 So that's what the disconnecter does. It prevents
15 the gun from going off again. The FRT-15 doesn't have a
16 disconnecter, again, as you heard from Mr. Ciravolo.

17 And what that means is, it can continue to go off
18 automatically, harnessing the mechanical energy generated by
19 the release of a single shot and will continue to do so
20 until the shooter releases all pressure on the trigger.

21 The other difference is the addition of a timing
22 mechanism. Obviously, every part of a firearm is implicated
23 in timing in some way. The difference here is that, in an
24 M16 and in an FRT-15, as you heard from Mr. Ciravolo, it's
25 not safe for the firearm to, or for the hammer to strike the

1 firing pin at all points during the firing sequence.

2 There's a limited period in which that is safe.

3 There is no disconnecter, as Mr. Ciravolo said, in an FRT-15
4 or an M16. So what that means is there's nothing
5 restraining the hammer.

6 There has to be something that prevents the hammer
7 from hitting the firing pin during a period in the firing
8 cycle in which it would be unsafe for the hammer to do so.
9 And what that is is the timing mechanism. It's the locking
10 bar, as Mr. Ciravolo explained in the context of the FRT-15,
11 and it is an automatic sear in the context of an M16.

12 They interact on different parts of the trigger
13 group, that is true, but they are serving the same function
14 which serves to illustrate how the FRT-15 functions in the
15 same way as an M16, and it is fully automatic.

16 One thing we didn't really see the testimony on,
17 but we sent your Honor a video, and it's described in our
18 briefing, is the Zip-Tie or cable test. This shows this
19 perfectly.

20 When constant rearward pressure is applied to the
21 trigger shoe by a Zip-Tie, a Zip-Tie is an inanimate object,
22 it's not making a choice to release pressure again, to
23 reapply it. It's maintaining constant rearward pressure.

24 The firearm continues to fire until it
25 malfunctions, or it runs out of ammunition. We submitted,

1 with our opposition brief a video, and I would just strongly
2 urge your Honor to watch that, if he has not already,
3 because it shows that, when subject to inanimate rearward
4 pressure, without any conscious decision to reengage or to
5 release pressure, the firearm continues to fire with an
6 FRT-15.

7 And again, the fact that this pressure is
8 constant, and rearward does not mean that the trigger is
9 performing more than one function as the Cargill plurality
10 made clear, the act of pulling and holding the trigger is
11 one function. And that's all that needs to happen in an
12 FRT-15 for it to continue to fire.

13 Unless your Honor has any questions on what I just
14 spoke about --

15 THE COURT: Just briefly, and I appreciate you
16 getting to the point.

17 My question to you is, is there any factual
18 dispute about how any of these guns work between you and the
19 plaintiff?

20 MR. RESAR: I don't think so, your Honor. I think
21 we agree on the way that guns work. I think the
22 disagreement is on how this statute is applied.

23 THE COURT: Right. And even with the Zip-Tie, the
24 trigger for the FRT-15 operates the same with a Zip-Tie as
25 with someone putting their finger on it, as with any other

1 way you can make it operable, or make it work?

2 MR. RESAR: Yes, that's correct. And just to be
3 clear on the Zip-tie, it's not being held in its most
4 rearward position, because that would jam the firearm, as I
5 think we've heard from both experts today.

6 It's a sort of Goldilocks level of force being
7 applied to it, somewhere in the middle, sufficient to
8 overcome the trigger spring, but insufficient to
9 mechanically bind the firearm.

10 THE COURT: And so, with an FRT-15, the trigger
11 must move however slightly for a round to be expelled?

12 MR. RESAR: Yes. The trigger chute flutters back
13 and forth, I think is a simple way of thinking about it.

14 THE COURT: For an M16, that does not need to
15 happen?

16 MR. RESAR: That's correct. For an M16, the
17 trigger remains entirely rearward. As you heard from
18 Mr. Ciravolo, clearly there are guns that no one disputes
19 that are machineguns in which the trigger does move during
20 the firing cycle, in which you pull it halfway to get one
21 shot and you keep pulling it back to get automatic fire and
22 likewise with the FN P90.

23 THE COURT: And on those two, I didn't want to get
24 caught up too much on that, but on those two, when you pull
25 it halfway back, it's a semiautomatic?

1 MR. RESAR: Correct. Exactly.

2 THE COURT: And then, when you engage that, one
3 round comes out, it's a semiautomatic round? Multiple
4 rounds cannot come out when you pull it back, it halfway
5 back?

6 And then, if you engage it further, all the way
7 back, then you can have the burst fire of an automatic?

8 MR. RESAR: Yes, precisely. That's what
9 Mr. Ciravolo explained.

10 THE COURT: Okay. And as it relates to the
11 Cargill decision, the Fifth Circuit concluded or determined,
12 the majority opinion, the controlling opinion concluded that
13 function of the trigger meant action?

14 MR. RESAR: If I could just push back? I'm sorry,
15 this may seem like splitting hairs, but that was a
16 plurality, it was eight judges who concluded that. It was,
17 I believe, a 16-judge en banc.

18 So I think there is some dispute over whether that
19 is controlling or not, but we certainly recognize it is, at
20 a minimum, highly persuasive, and we think this satisfies
21 the definition under that. I just wanted to note for the
22 record that the U.S.'s position is that is not officially a
23 controlling opinion.

24 THE COURT: Okay. Thank you. For that portion of
25 the opinion, the function they define, that en banc of the

1 court defined that function as action, action of the
2 trigger? Function of the trigger means action of the
3 trigger?

4 MR. RESAR: I don't think I agree with that, your
5 Honor. I think it's initiating the firing sequence.

6 THE COURT: The reason I ask that is because that
7 is, at that first part of the opinion, when the writer is
8 grappling with how to determine that, that portion of the
9 opinion says function means action.

10 MR. RESAR: Yes, your Honor.

11 THE COURT: Right?

12 And they're talking about the trigger?

13 MR. RESAR: Uh-huh.

14 THE COURT: But you disagree that it would be
15 action of the trigger?

16 MR. RESAR: Well, let me clarify. So the trigger
17 is defined as a mechanism that initiates the firing
18 sequence. So the function of the trigger is the action that
19 the trigger takes to initiate the firing sequence.

20 I don't think that we're disagreeing, or I'm
21 trying to disagree, I'm certainly not. I think I'm just
22 putting it in slightly different words that are used
23 elsewhere in the opinion.

24 THE COURT: Got you. Okay.

25 So for it to be a machinegun then, the FRT-15 will

1 need to automatically expel projectiles with the single
2 pulling of the trigger?

3 MR. RESAR: With a single, continuous pull. And
4 that's because the FRT-15-equipped firearm initiates the
5 firing sequence once and the rest of that happens
6 automatically.

7 THE COURT: Right. So your view is that, by
8 holding the trigger down, even though it moves, that is a
9 single action of the trigger? Right? We don't use pull,
10 right?

11 MR. RESAR: Correct. Yes.

12 THE COURT: According to that portion of the
13 opinion, we don't use pull. We use action of the trigger.

14 And it is a single action, in your mind, even
15 though the trigger moves back and forth to propel these
16 multiple projectiles out of the firearm?

17 MR. RESAR: Yes. Correct, your Honor. And that
18 comes directly from the language in Cargill that we've read
19 a few times now stating that single rearward pull causes
20 malfunction.

21 THE COURT: Okay. Very good. She's going to
22 address a couple of facts just briefly.

23 MS. BAKST: Thank you, your Honor. I will keep
24 this very brief. I just want to speak about scope of
25 relief. Plaintiffs here are seeking an extremely broad

1 injunction that would cover enforcement relating to effort
2 to use virtually anywhere against anyone.

3 This is significantly broader than plaintiffs have
4 asked at the TRO stage. And if you are, your Honor,
5 inclined to issue an injunction and to issue an injunction
6 broader than just individual plaintiffs, the government
7 would ask that it be limited in two important respects.

8 First, we would ask that it be limited to
9 enforcement against individual owners for possession of
10 forced reset triggers.

11 Plaintiffs here are obligated to demonstrate
12 standing for each relief sought and plaintiffs and members
13 are individual small-scale owners of forced reset trigger
14 devices.

15 So plaintiffs cannot demonstrate standing to the
16 extent the injunction -- sorry, I'm getting over a cold --
17 to the extent the injunction would apply to manufacturers,
18 to sellers, or to entities that give public statements or
19 statements to purchasers regarding the legality of FRTs. It
20 should be only limited to enforcement against small-scale --
21 or against owners.

22 Second, the government would ask that, if an
23 injunction were to issue broader than individual plaintiffs,
24 it be limited to the Northern District of Texas. The Fifth
25 Circuit and the Supreme Court have recognized that

1 nationwide injunctions should be used sparingly.

2 And as the Fifth Circuit stated in Louisiana v.
3 Becerra, where there is a substantial question presented and
4 being litigated in multiple forums, there is a benefit to
5 allowing competing views to be aired. That is the situation
6 here.

7 We have the Aidan Lee decision that found that
8 forced reset triggers are very likely to be machineguns.
9 We've had multiple courts of appeals in other jurisdictions
10 respectfully disagree with the Cargill holding.

11 And so, granting a nationwide injunction here
12 would essentially elevate Cargill to be the law of the land
13 even in those other jurisdictions.

14 Finally, I would just ask that, if the Court is
15 inclined to grant an injunction, that it issue an
16 administrative stay for two weeks to allow the government an
17 opportunity to decide if it should seek a stay while pending
18 an appeal.

19 While I'm happy to answer any questions about
20 standing or about scope of relief, given the time, that is
21 all. Thank you.

22 THE COURT: Thank you.

23 Counsel.

24 MR. COLUMBO: Your Honor, plaintiffs are here
25 today because the ATF has been knocking on the doors of

1 Americans who own guns outfitted with the FRT-15 and people
2 are being given letters declaring that these citizens are
3 committing the crime of possessing an illegal machinegun and
4 demanding they surrender their weapons and many have.
5 Several people have already been charged with crimes for
6 having FRT-15s.

7 You know, when we came here today, we were
8 prepared to confront the government's position in its
9 pleadings that revolved around the continuous, rearward
10 pressure standard, or depression of the trigger standard, or
11 conscious release standard, but we were surprised today when
12 the government has seemingly abandoned all of that argument,
13 even including the regulatory argument under the CFR in its
14 expert's report.

15 So we're not going -- our reply to their
16 opposition to our motion amply covers our views of those
17 standards, and I won't repeat them.

18 Just quickly to touch on Cargill. Cargill did
19 reject this shooter action-based definition of a trigger.
20 Although I still heard in counsel's closing the concept of a
21 single, continuous pull, which I thought from Mr. Ciravolo
22 was not the standard being employed.

23 But the Fifth Circuit in Cargill held that the
24 function of the trigger is the "follow-on action where the
25 trigger acts out its mechanical design or purpose," and that

1 happens after the shooter has moved the trigger. In this,
2 they were agreeing with the position of the military court
3 in Alkazahg that's cited in our papers.

4 As to the function of the trigger, the Fifth
5 Circuit held that in a hammer-fired gun, like the AR-15, the
6 trigger's function is to release the hammer as part of a
7 simple mechanical process.

8 Even before Cargill, as early as 1992, the Fifth
9 Circuit described the role of a trigger in a hammer-fired
10 weapon similarly as, "The part of the action of a firearm
11 moved by the finger to release the hammer in firing."
12 That's from United States vs. Jokel at 969 F.2d 132, and pin
13 cite is 134.

14 Accordingly, a single function of the trigger
15 refers to the purpose and action of the trigger and not the
16 user, by contrast.

17 As counsel said, we do agree on how the FRT-15
18 works. It sounds like, according to Mr. Ciravolo, we all
19 are agreeing that the only standard is what's in the statute
20 itself.

21 But as to the operation of the FRT-15, we've heard
22 testimony today that, one, for every shot fired, an FRT-15
23 trigger must function. That is, it must move rearwards to
24 perform the function of releasing the hammer.

25 Two, after each shot is fired on an FRT-15

1 trigger, like every semiautomatic trigger, the trigger must
2 reset and reengage the hammer.

3 And three, in a machinegun, by contrast, the
4 trigger functions only once for multiple shots. That is, it
5 moves rearwards to release the hammer only once to fire
6 multiple shots by that single function of the trigger.

7 While firing multiple shots, a machinegun's
8 trigger does not reengage the hammer. And therefore, the
9 trigger does not perform a separate function for each shot.

10 In sum, to fire five shots, an FRT-15's trigger
11 must function five times. Same as the case for any
12 semiautomatic gun, but a machinegun can fire five shots with
13 just a single function of the trigger.

14 The trigger of all semiautomatic guns, including
15 FRT-15s, must reset in between each shot. That is, the
16 trigger must move forward again and recapture the hammer in
17 preparation for the next shot.

18 The only material difference between any other
19 semiautomatic AR-15 and the FRT-15 is that the FRT-15, the
20 hammer resets the trigger instead of a spring. That's the
21 difference.

22 At the risk of repetition, this does not change
23 the fact that, like any semiautomatic gun, the trigger in an
24 FRT-15 must still move rearward to make the trigger function
25 to fire each and every shot. And that the only force that

1 causes the trigger to do that is supplied by the user.

2 Cargill held that the statutory definition -- this
3 is a quote -- "The statutory definition of a machinegun
4 utilizes a grammatical construction that ties the definition
5 of the movement to the movement of the trigger itself, not
6 the movement of a trigger finger."

7 The government offers nothing to overcome this
8 plain reading. The statutory definition of machinegun
9 unambiguously turns on the movement of the trigger and not a
10 trigger finger.

11 The statute does not care what human input is
12 required to activate the trigger. It cares only whether
13 more than one shot is fired each time the trigger acts.
14 Thank you, your Honor. And my colleague, Gary Lawkowski,
15 will address the other question.

16 MR. LAWKOWSKI: Thank you, your Honor. Gary
17 Lawkowski for the plaintiffs. I will just address a couple
18 issues about the scope of relief.

19 So first, they've raised the question of, you
20 know, should we limit it to individual possession? While
21 that's certainly better than the status quo, we don't
22 believe that's adequate for the claims at issue here.

23 That's for three reasons. First, the
24 associational plaintiffs are broader than just individuals.
25 They include sellers. They include manufacturers. So that

1 would not really fully protect the members of the
2 associational plaintiffs.

3 Second, even amongst the individual plaintiffs,
4 Plaintiff Wheeler is an individual who sells gun parts,
5 including previously FRT-15s. So that type of relief would
6 not sufficiently protect him; it would only protect his
7 possession. It would not protect his ability to engage in
8 commerce.

9 And third, it would not be adequate to protect the
10 other individuals who wish to obtain an FRT-15. You have to
11 be able to buy one of these things in order to possess them.
12 Or to exercise the rights at issue here, they would have to
13 be able to obtain them from somewhere. That requires there
14 be a market somewhere. That requires a broader injunction
15 of what defendants have proposed.

16 To address the second point of limiting any relief
17 to the Northern District of Texas. This would also be
18 inadequate. First of all, that would not even protect the
19 individual-named plaintiffs. Plaintiff Carey is located in
20 Louisiana. He would not be protected by that sort of
21 relief.

22 Second, it would not protect the scope of the
23 organizational plaintiffs who are involved. Texas Gun
24 Rights is a Texas-wide organization; it's not limited to
25 just the Northern District of Texas. The National

1 Association for Gun Rights is a national organization; it is
2 not limited to just the Northern District of Texas.

3 And as demonstrated in our reply brief, there have
4 been numerous instances where ATF and defendants have been
5 reaching out to individual members of the National
6 Association for Gun Rights around the country and making
7 these sort of, we'll say, threatening statements of, hey, it
8 would be great if you turn this thing in. This is illegal,
9 give it to us or we're going to prosecute you, or there will
10 be consequences.

11 Those people would not be protected. So the
12 people who are before you in this case would not be
13 protected by an injunction that is just limited to the
14 Northern District of Texas. Thank you.

15 THE COURT: All right. Thank you.

16 I will take it all under advisement and get a
17 ruling out just as directly as we can. I'm sorry that we
18 don't have more time to engage in more questions, but I'm
19 just in a bit of a jam. So we are in recess. Thank you
20 all.

21 THE COURT SECURITY OFFICER: All rise.

22 (The proceedings concluded at 12:09 p.m.)
23
24
25

REPORTER'S CERTIFICATE

I, ZOIE WILLIAMS, RMR, RDR, FCRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter to the best of my ability to hear.

Further, due to the COVID-19 pandemic, some participants are wearing masks, and/or appeared via videoconferencing, so proceedings were transcribed to the best of my ability.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 9th day of October, 2023.

_____/s/ Zoie Williams_____
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MR. CLENDENEN: [13]

5/16 6/6 6/12 31/18 32/17
 39/3 39/7 44/7 46/6
 119/21 125/1 127/20
 127/22

MR. COLUMBO: [26] 5/8

5/19 5/21 6/2 6/5 6/13
 6/17 14/4 28/22 31/9
 31/12 31/15 32/13 44/9
 45/21 65/23 99/1 115/10
 117/3 117/9 126/23 127/25
 128/10 128/14 128/20
 139/24

MR. LAWKOWSKI: [2]

127/21 143/16

MR. RESAR: [32] 5/12

45/23 46/3 46/10 52/5
 52/11 57/23 61/15 65/24
 75/1 76/24 98/15 115/11
 117/1 128/21 129/1 129/3
 129/5 133/20 134/2 134/12
 134/16 135/1 135/8 135/14
 136/4 136/10 136/13
 136/16 137/3 137/11 137/17

MR. WARRINGTON: [1]

5/25

MS. BAKST: [2] 5/14

137/23

THE COURT SECURITY**OFFICER: [3]** 5/4 98/23

145/21

THE COURT: [73] 5/5

5/10 5/18 5/20 5/23 6/1
 6/4 6/11 6/15 6/19 6/22
 14/8 27/15 28/25 31/11
 31/13 32/16 32/19 39/6
 40/19 45/22 46/1 46/4
 46/7 46/9 46/12 46/16
 52/8 52/14 57/25 61/14
 61/17 74/25 77/1 98/17
 98/24 99/4 100/4 100/9

105/24 106/5 117/2 117/5

117/8 117/12 118/1 119/24

124/14 124/22 125/2 128/2

128/13 128/16 128/24

129/2 129/4 133/15 133/23

134/10 134/14 134/23

135/2 135/10 135/24 136/6

136/11 136/14 136/24

137/7 137/12 137/21

139/22 145/15

THE WITNESS: [16]

6/21 19/15 27/17 30/17

40/21 46/8 46/15 46/18

100/8 106/4 117/6 117/11

117/13 118/2 125/3 128/15

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'60s [2] 16/4 58/9

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00830 [1] 5/6

0261 [1] 61/7

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10 [4] 33/22 119/17 119/18

129/2

10-minute [1] 98/19

100 [1] 13/21

102 [1] 1/23

10:51 a.m [1] 98/21

10th [2] 3/3 146/20

11 [2] 8/18 9/11

1100 [1] 2/6

11:00 [1] 98/20

12 [1] 7/20

12028 [1] 2/6

12:09 p.m [1] 145/22

13 [2] 61/6 61/16

132 [1] 141/12

134 [1] 141/13

14 [1] 7/7 17/17

14,000 [1] 47/19

15 [186]

15's [4] 22/22 40/2 68/1

142/10

15s [6] 21/22 58/14

100/13 140/6 142/15 144/5

16-judge [1] 135/17

177 [1] 1/16

18 [1] 33/14

19 [1] 146/8

1950s [1] 16/2

1975 [1] 54/21

1980 [1] 13/5

1990 [2] 13/6 13/18

1992 [1] 141/8

1998 [1] 12/12

2

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20 [2] 37/22 53/9

20 pounds [1] 38/1

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202.305.0693 [1] 2/7

2023 [4] 1/9 5/2 57/15

146/15

21 [2] 65/22 65/24

2121 [1] 1/20

22 [2] 65/25 66/4

22314 [1] 1/20

23 [1] 8/16

26 [5] 34/5 34/7 68/17

79/21 129/11

27 [3] 82/8 93/21 104/23

28 [1] 83/12

29 [1] 75/1

3

30 [4] 30/5 60/25 61/4

61/5

30-shot [1] 30/7

300 [3] 1/23 48/12 48/14

<p>3</p> <p>32 [1] 63/21</p> <p>35 [2] 64/9 99/2</p> <p>39 [3] 65/20 65/21 66/3</p> <p>3MR [8] 26/22 55/12</p> <p>55/13 55/15 55/16 55/22</p> <p>56/2 56/4</p>	<p>A</p> <p>a.m [1] 98/21</p> <p>abandoned [1] 140/12</p> <p>ability [3] 144/7 146/7</p> <p>146/11</p> <p>able [4] 36/2 53/5 144/11</p> <p>144/13</p> <p>aboard [1] 10/8</p> <p>about [52] 9/9 11/9 11/17</p> <p>13/23 18/15 20/25 23/4</p> <p>29/9 34/1 34/21 38/12</p> <p>47/22 51/21 57/12 58/25</p> <p>83/19 84/16 88/21 98/19</p> <p>99/2 101/12 101/21 104/4</p> <p>104/11 107/8 107/16 110/12</p> <p>111/17 112/25 115/14 116/11</p> <p>117/17 117/21 118/22 120/2</p> <p>120/6 121/20 121/20 122/2</p> <p>122/4 124/2 128/10 129/2</p> <p>129/21 133/14 133/18</p> <p>134/13 136/12 137/24</p> <p>139/19 139/20 143/18</p> <p>above [7] 3/8 41/15 62/5</p> <p>69/17 69/19 80/12 104/18</p> <p>abroad [1] 9/20</p> <p>absolute [1] 21/18</p> <p>absolutely [5] 21/13 38/11</p> <p>84/7 124/1 126/22</p> <p>academies [1] 9/20</p> <p>academy [9] 7/2 7/6 8/10</p> <p>8/24 9/10 9/22 12/12</p> <p>12/25 13/4</p> <p>accomplished [1] 40/24</p> <p>according [2] 137/12</p> <p>141/18</p> <p>Accordingly [2] 102/15</p> <p>141/14</p> <p>accurate [4] 52/2 57/19</p> <p>101/3 105/9</p> <p>accurately [3] 69/3 80/5</p> <p>100/25</p> <p>act [5] 83/11 94/1 122/15</p>	<p>127/14 133/10</p> <p>acting [11] 63/14 63/23</p> <p>72/23 72/25 76/5 83/14</p> <p>84/2 84/21 87/5 87/5</p> <p>90/24</p> <p>action [22] 19/21 54/9</p> <p>55/5 55/10 94/17 94/19</p> <p>108/11 109/9 135/13 136/1</p> <p>136/1 136/2 136/9 136/15</p> <p>136/18 137/9 137/13</p> <p>137/14 140/19 140/24</p> <p>141/10 141/15</p> <p>action-based [1] 140/19</p> <p>activate [1] 143/12</p> <p>activated [1] 81/6</p> <p>acts [3] 130/16 140/25</p> <p>143/13</p> <p>actually [12] 11/25 15/14</p> <p>16/23 27/13 28/16 29/8</p> <p>29/22 35/11 94/24 99/25</p> <p>117/9 125/21</p> <p>adding [1] 114/18</p> <p>addition [3] 10/13 13/1</p> <p>131/21</p> <p>additional [2] 33/14 68/5</p> <p>address [8] 129/7 129/8</p> <p>129/13 137/22 143/15</p> <p>143/17 144/16 146/20</p> <p>adequate [2] 143/22 144/9</p> <p>adjourned [1] 98/21</p> <p>administer [1] 47/11</p> <p>administered [1] 46/14</p> <p>administrative [2] 6/9</p> <p>139/16</p> <p>admit [5] 14/4 28/23 31/9</p> <p>119/7 119/8</p> <p>admitted [11] 28/25 29/1</p> <p>31/13 31/14 52/9 52/10</p> <p>57/25 58/1 77/1 77/2</p> <p>119/5</p> <p>adopted [1] 16/3</p> <p>advantage [1] 40/1</p>
<p>4</p> <p>40-5 [1] 53/12</p> <p>408.636.3438 [1] 1/24</p> <p>415.944.4996 [1] 1/17</p> <p>46 [1] 74/24</p> <p>463 [2] 127/13 127/22</p> <p>478.11 [1] 104/24</p> <p>479.11 [2] 93/21 104/24</p> <p>4:23-CV-00830 [1] 5/6</p> <p>4:23-CV-00830-O [1] 1/6</p>		
<p>5</p> <p>50,000 pounds [1] 36/18</p> <p>501 [2] 3/3 146/20</p> <p>57 [2] 66/3 127/12</p> <p>5845 [1] 129/12</p>		
<p>6</p> <p>600 [1] 57/19</p> <p>608 [1] 1/20</p>		
<p>7</p> <p>700 [1] 1/16</p> <p>703.574.1206 [1] 1/21</p> <p>76086 [1] 1/23</p> <p>76102 [2] 3/3 146/20</p>		
<p>8</p> <p>817.850.6630 [2] 3/4</p> <p>146/21</p>		
<p>9</p> <p>90 [1] 101/21</p> <p>94108 [1] 1/17</p> <p>969 [1] 141/12</p> <p>9th [1] 146/15</p>		

<p>A</p> <p>advertises [1] 35/3</p> <p>avisement [1] 145/16</p> <p>affected [1] 33/16</p> <p>Africa [1] 9/23</p> <p>aft [2] 30/2 107/21</p> <p>after [32] 9/10 14/14 14/15 28/15 30/22 35/21 40/4 40/6 40/15 46/4 68/2 72/19 77/17 81/25 89/11 90/8 91/3 92/22 92/25 101/13 109/5 109/9 111/1 111/20 113/2 123/6 123/10 123/20 124/9 131/9 141/1 141/25</p> <p>afternoon [2] 31/18 128/4</p> <p>afterwards [1] 27/10</p> <p>again [82] 16/19 20/4 22/19 23/10 23/16 24/7 24/9 24/12 24/12 24/16 24/24 25/3 25/8 25/10 25/18 26/9 26/10 27/1 28/3 29/7 30/1 36/6 38/21 38/22 38/22 42/14 54/13 56/1 56/23 64/19 64/21 64/25 65/15 65/18 66/14 66/24 66/25 68/3 68/5 68/9 68/15 68/23 74/12 76/13 78/14 79/5 79/20 80/19 81/3 81/7 81/11 85/17 86/25 91/2 97/5 106/21 107/18 108/1 111/4 111/8 111/22 115/19 120/6 120/11 120/25 121/3 121/8 121/15 121/18 122/16 125/13 126/3 126/8 126/11 127/21 130/16 131/10 131/15 131/16 132/22 133/7 142/16</p> <p>against [7] 54/10 84/6 91/13 138/2 138/9 138/20 138/21</p>	<p>age [1] 85/10</p> <p>agencies [1] 8/9</p> <p>agency [3] 6/9 12/9 101/4</p> <p>agent [9] 8/12 8/15 8/21 8/23 9/6 9/11 9/17 11/13 34/14</p> <p>agents [10] 7/24 8/3 8/5 8/7 10/17 12/13 12/21 12/22 33/22 48/22</p> <p>ago [3] 20/21 32/9 102/1</p> <p>agree [16] 84/24 97/23 97/24 99/15 101/23 102/11 102/15 102/18 104/3 106/17 110/3 113/12 127/18 133/21 136/4 141/17</p> <p>agreeing [2] 141/2 141/19</p> <p>ahead [3] 6/15 32/19 40/17</p> <p>Aidan [1] 139/7</p> <p>aired [1] 139/5</p> <p>al [2] 1/5 1/8</p> <p>Alcohol [3] 8/15 46/25 99/9</p> <p>Alex [2] 5/12 45/23</p> <p>ALEXANDER [1] 2/4</p> <p>Alexandria [1] 1/20</p> <p>Alkazahg [1] 141/3</p> <p>all [48] 5/4 5/18 5/23 11/6 12/13 14/1 15/5 16/10 17/6 21/22 25/22 26/1 30/20 33/17 36/3 44/7 47/16 60/17 70/22 73/20 78/8 88/20 89/1 95/11 95/15 98/10 98/23 103/25 112/21 113/20 118/3 118/16 122/14 124/14 124/23 131/20 132/1 133/11 135/6 139/21 140/12 141/18 142/14 144/18 145/15 145/16 145/20 145/21</p> <p>allow [10] 34/20 34/20 40/7 65/2 67/2 95/8</p>	<p>113/11 114/11 123/24 139/16</p> <p>allowing [2] 25/2 139/5</p> <p>allows [5] 26/4 63/2 70/18 71/1 96/24</p> <p>alone [1] 50/10</p> <p>along [4] 10/10 53/14 60/24 101/13</p> <p>already [7] 32/15 53/12 62/18 101/3 122/9 133/2 140/5</p> <p>also [22] 5/21 9/3 23/23 33/2 37/21 40/18 43/25 47/8 47/11 47/21 50/14 54/11 54/16 55/3 55/19 57/8 57/9 95/2 102/19 114/25 121/21 144/17</p> <p>Although [1] 140/20</p> <p>always [2] 90/23 90/24</p> <p>am [8] 29/6 58/24 59/16 69/9 91/15 99/16 99/24 101/11</p> <p>Americans [1] 140/1</p> <p>ammunition [10] 7/18 31/22 32/5 33/14 33/15 33/23 44/19 79/16 131/1 132/25</p> <p>amongst [1] 144/3</p> <p>amount [20] 35/19 36/13 37/4 38/7 38/8 38/13 38/21 41/15 41/20 41/25 41/25 42/4 42/8 42/15 44/24 86/11 86/16 86/17 86/19 86/22</p> <p>amply [1] 140/16</p> <p>analogous [1] 105/12</p> <p>analyses [1] 54/3</p> <p>analysis [1] 93/20</p> <p>animated [1] 80/4</p> <p>animation [3] 61/13 61/22 69/1</p> <p>another [28] 20/6 22/5</p>
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<p>A</p> <p>another... [26] 24/24</p> <p>25/3 26/21 27/25 32/6</p> <p>38/23 40/16 41/17 55/10</p> <p>55/11 55/16 56/1 59/11</p> <p>61/8 65/3 67/3 67/5</p> <p>112/13 121/9 121/18 121/20</p> <p>122/8 125/23 125/24</p> <p>126/2 126/14</p> <p>answer [2] 61/20 139/19</p> <p>answering [2] 9/9 38/4</p> <p>Anthony [5] 2/16 4/12</p> <p>45/24 46/11 52/6</p> <p>any [65] 7/14 10/10 10/19</p> <p>13/2 13/16 14/13 14/20</p> <p>14/25 15/2 15/13 15/15</p> <p>26/25 28/12 31/1 32/24</p> <p>33/7 35/25 36/1 36/10</p> <p>43/11 43/16 43/24 44/20</p> <p>46/2 48/17 49/3 50/8</p> <p>53/2 53/4 53/18 56/6</p> <p>58/21 59/22 61/14 62/13</p> <p>67/9 67/16 69/6 69/9</p> <p>89/3 94/5 94/13 95/17</p> <p>95/23 96/5 96/16 99/10</p> <p>99/16 99/24 101/20 106/14</p> <p>116/23 122/17 123/23</p> <p>128/7 133/4 133/13 133/17</p> <p>133/18 133/25 139/19</p> <p>142/11 142/18 142/23</p> <p>144/16</p> <p>anybody [2] 10/7 34/15</p> <p>anymore [1] 65/9</p> <p>anyone [3] 12/20 12/23</p> <p>138/2</p> <p>anything [12] 11/20 25/21</p> <p>45/22 48/18 74/14 74/19</p> <p>79/2 89/24 92/5 98/12</p> <p>117/20 126/18</p> <p>anyway [4] 16/19 17/7</p> <p>106/15 128/17</p> <p>anywhere [2] 127/7 138/2</p>	<p>APA [2] 6/8 6/14</p> <p>apologize [2] 61/15 65/25</p> <p>appeal [1] 139/18</p> <p>appeals [1] 139/9</p> <p>appear [1] 57/18</p> <p>appeared [1] 146/9</p> <p>appearing [1] 101/9</p> <p>applicable [2] 98/10 115/1</p> <p>applied [8] 25/8 44/25</p> <p>67/8 67/11 130/7 132/20</p> <p>133/22 134/7</p> <p>applies [10] 12/24 17/23</p> <p>37/3 43/21 62/22 72/9</p> <p>77/10 81/25 84/16 98/3</p> <p>apply [11] 35/19 57/8</p> <p>62/20 72/6 77/8 81/23</p> <p>90/18 90/25 93/23 109/23</p> <p>138/17</p> <p>applying [3] 72/16 83/4</p> <p>94/8</p> <p>appreciate [1] 133/15</p> <p>approved [1] 26/14</p> <p>approximately [6] 20/21</p> <p>35/9 47/3 47/19 49/14</p> <p>50/19</p> <p>April [1] 104/11</p> <p>aqua [1] 18/17</p> <p>aqua-colored [1] 18/17</p> <p>AR [69] 11/5 11/7 11/10</p> <p>13/9 15/9 15/19 15/21</p> <p>15/24 16/14 16/16 16/21</p> <p>17/2 20/11 20/14 21/17</p> <p>21/20 21/22 21/23 22/2</p> <p>22/15 23/1 26/14 27/19</p> <p>36/18 40/23 50/16 51/16</p> <p>52/22 58/5 58/6 58/10</p> <p>58/14 58/18 59/20 59/22</p> <p>60/15 60/21 61/24 62/13</p> <p>65/15 66/14 66/23 68/1</p> <p>70/5 71/13 71/14 74/4</p> <p>80/20 81/12 85/19 85/22</p> <p>85/23 86/11 90/12 92/25</p>	<p>93/14 93/17 102/16 108/22</p> <p>114/6 114/6 114/15 114/16</p> <p>115/4 118/24 125/7 131/5</p> <p>141/5 142/19</p> <p>AR-15 [61] 11/5 11/7 11/10</p> <p>13/9 15/9 15/19 15/21</p> <p>15/24 16/14 16/16 16/21</p> <p>17/2 20/11 20/14 21/17</p> <p>21/20 21/23 22/2 22/15</p> <p>26/14 36/18 40/23 50/16</p> <p>51/16 58/5 58/6 58/10</p> <p>59/20 59/22 60/15 60/21</p> <p>61/24 62/13 65/15 66/14</p> <p>66/23 70/5 71/13 71/14</p> <p>74/4 80/20 81/12 85/19</p> <p>85/22 85/23 86/11 92/25</p> <p>93/14 93/17 102/16 108/22</p> <p>114/6 114/6 114/15 114/16</p> <p>115/4 118/24 125/7 131/5</p> <p>141/5 142/19</p> <p>AR-15's [1] 68/1</p> <p>AR-15-style [1] 52/22</p> <p>AR-15-type [2] 27/19</p> <p>90/12</p> <p>AR-15s [2] 21/22 58/14</p> <p>AR-type [1] 23/1</p> <p>are [135] 5/5 6/1 6/25</p> <p>7/22 8/3 11/22 12/12 15/2</p> <p>16/11 16/12 16/19 18/11</p> <p>18/21 20/1 20/18 20/20</p> <p>20/25 21/22 23/4 26/13</p> <p>26/13 26/17 27/8 27/9</p> <p>27/18 28/9 28/10 28/14</p> <p>28/16 29/5 29/9 29/16</p> <p>29/17 29/21 29/22 30/4</p> <p>30/7 33/19 33/20 33/22</p> <p>33/23 35/22 39/1 44/18</p> <p>47/4 47/5 48/5 48/6 50/7</p> <p>51/13 51/14 54/8 54/20</p> <p>55/12 55/13 56/14 56/24</p> <p>57/3 58/21 59/14 60/17</p> <p>61/10 61/12 61/20 61/21</p>
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<p>A are... [70] 63/6 63/11 64/2 64/15 66/3 67/16 68/24 69/1 69/6 70/19 71/14 72/18 73/6 77/12 83/18 83/22 88/19 88/24 89/1 92/21 92/22 94/8 94/14 94/16 95/17 96/11 96/11 96/16 96/23 100/11 101/10 105/14 108/6 108/12 108/14 108/15 115/1 118/3 119/8 121/19 121/20 122/1 122/3 122/3 123/17 123/20 128/8 128/22 129/11 129/14 129/22 131/8 132/13 134/18 134/19 136/22 137/25 138/4 138/11 138/13 139/8 139/24 140/2 140/2 141/19 143/24 144/23 145/12 145/19 146/9 area [2] 62/10 118/12 aren't [1] 100/13 argument [4] 31/16 98/16 140/12 140/13 arm [1] 51/16 ArmaLite [1] 58/8 armorer [10] 10/15 10/24 10/25 13/1 49/22 50/1 50/10 50/12 50/13 50/15 armorers [1] 50/16 Armory [1] 26/19 arms [3] 51/12 51/13 51/14 around [2] 140/9 145/6 arrow [2] 87/6 87/7 as [175] ask [13] 27/10 38/12 51/20 76/18 85/17 119/24 128/18 128/22 136/6 138/7 138/8 138/22 139/14 asked [7] 20/22 38/13 52/17 115/14 116/11 128/8</p>	<p>138/4 asking [1] 46/1 aspect [3] 34/21 44/20 100/24 aspects [1] 7/18 asserted [3] 86/12 86/16 86/20 assertion [1] 117/24 assigned [4] 31/21 31/23 32/12 32/22 assist [2] 47/18 47/21 associated [1] 50/9 ASSOCIATION [3] 1/5 145/1 145/6 associational [2] 143/24 144/2 assume [4] 17/16 36/25 37/20 37/21 assuming [6] 38/3 57/9 62/18 67/24 72/4 91/21 assumptions [1] 38/5 at [113] 9/10 9/20 9/21 10/16 11/24 12/9 12/12 12/25 17/6 17/15 17/15 17/16 17/16 17/19 18/17 18/18 19/5 19/6 19/7 19/11 19/12 19/19 20/1 20/8 20/22 21/10 22/19 23/20 24/1 24/2 24/5 24/12 24/16 24/16 27/8 27/25 29/10 29/12 29/18 30/1 31/22 31/24 32/3 32/24 34/15 34/18 38/19 39/22 40/5 40/19 44/7 53/13 61/1 62/8 63/10 64/1 64/13 65/21 66/3 66/18 68/23 69/20 72/17 73/5 74/2 75/16 78/4 79/23 80/15 82/22 83/17 83/21 85/10 86/25 88/6 88/12 88/17 89/13 90/9 91/12 91/14 92/15 94/3 94/4</p>	<p>97/3 97/13 98/8 98/19 98/21 109/19 109/25 110/4 110/12 110/22 112/13 117/10 118/13 118/16 123/8 125/24 126/9 127/22 128/19 129/19 132/1 135/19 136/7 138/4 141/12 142/22 143/22 144/12 145/22 ATF [33] 8/11 8/17 8/19 9/9 10/6 10/8 10/11 12/9 12/20 14/6 26/14 26/21 31/22 32/24 32/25 34/12 48/22 52/12 52/16 54/2 54/14 61/7 99/11 99/22 100/4 100/11 101/10 101/23 102/4 107/23 119/5 139/25 145/4 ATF's [8] 8/24 9/4 26/24 100/5 100/15 100/23 101/15 129/23 atmosphere [1] 88/21 attached [1] 77/14 attend [1] 11/7 attended [1] 51/4 attorneys [2] 7/25 127/24 audio [2] 19/14 30/16 AUG [2] 96/15 96/17 August [1] 57/15 August 1 [1] 57/15 authority [1] 11/1 auto [10] 111/18 111/21 117/24 122/20 123/10 123/12 123/21 125/4 125/8 125/10 automatic [56] 16/19 21/14 58/19 59/15 59/17 59/18 59/20 60/10 60/13 65/10 65/12 68/3 69/21 70/2 70/15 70/19 70/20 70/22 70/24 71/1 71/2 71/5 71/8 71/13 72/4 73/7 73/9 73/12 73/18 73/19 73/21</p>
---	---	--

<p>A</p> <p>automatic... [25] 73/23 73/24 74/11 75/8 75/9 75/21 75/23 76/3 76/4 76/6 77/23 78/4 78/6 78/6 79/10 81/4 97/18 115/14 115/16 116/7 127/13 132/11 132/15 134/21 135/7 automatically [17] 11/21 53/25 78/17 87/20 88/17 92/18 94/5 95/3 95/9 97/8 109/14 126/15 130/1 130/15 131/18 137/1 137/6 available [2] 7/19 7/21 AVENUE [2] 1/20 1/23 average [1] 53/8 avoid [2] 89/3 122/6 aware [10] 54/20 58/21 58/24 67/16 69/6 69/9 95/17 96/16 99/16 100/11 away [4] 10/6 89/17 91/25 126/7 axle [1] 17/25</p>	<p>89/8 89/15 89/16 90/22 91/14 91/24 109/17 109/20 110/7 111/1 126/6 132/10 barrel [10] 16/13 34/13 34/16 45/8 82/18 118/9 118/10 120/19 120/22 121/15 based [16] 16/10 38/5 47/7 54/1 58/12 65/12 92/18 96/25 101/17 102/12 104/6 105/4 105/8 108/11 116/9 140/19 basic [2] 10/4 12/24 basically [2] 36/7 126/15 Bates [1] 61/7 battery [7] 24/15 66/12 66/13 88/5 125/13 125/22 125/23 be [126] 5/5 6/8 6/20 12/20 13/7 13/17 15/4 17/4 18/10 19/10 20/4 24/7 25/2 25/12 26/2 28/25 31/13 33/15 35/5 35/12 36/2 36/15 37/16 41/21 44/14 45/12 46/13 48/20 49/3 49/5 49/6 49/10 49/12 49/18 50/20 52/8 52/24 53/5 54/7 57/18 57/25 58/4 59/22 60/23 60/24 61/7 63/1 64/5 66/3 68/15 70/5 71/1 73/19 73/24 74/10 74/12 75/9 77/1 79/1 79/20 81/5 82/5 82/13 84/7 85/1 85/14 86/6 87/14 88/10 89/13 90/24 91/12 92/5 92/10 92/18 94/17 94/19 95/3 96/15 98/4 98/24 98/24 98/25 100/5 100/6 103/5 103/11 105/7 107/1 108/9 109/3 110/15 114/13 115/16 115/19 115/19 116/6 116/8</p>	<p>116/17 118/12 123/1 127/16 132/6 132/8 134/2 134/11 136/14 136/25 138/7 138/8 138/20 138/24 139/1 139/5 139/8 139/12 144/9 144/11 144/13 144/14 144/17 144/20 145/8 145/10 145/11 145/12 bear [1] 129/18 bearing [4] 23/21 23/23 102/16 105/3 became [2] 8/25 32/10 because [37] 10/8 12/1 19/4 22/12 26/3 27/5 32/1 34/14 35/25 53/24 59/25 64/22 66/17 68/18 76/8 92/15 103/5 103/23 108/6 110/7 110/15 110/17 110/18 117/25 121/1 121/21 125/25 126/5 127/14 129/11 129/19 130/13 133/3 134/4 136/6 137/4 139/25 Becerra [1] 139/3 become [6] 51/1 64/7 73/25 75/22 118/9 121/15 becomes [1] 24/22 been [25] 10/9 13/3 13/15 16/6 32/15 47/1 71/24 73/11 75/11 80/14 82/10 82/23 91/4 93/1 95/10 99/16 109/19 117/22 119/22 121/3 127/11 139/25 140/5 145/4 145/4 before [28] 1/12 6/6 6/9 8/10 8/10 8/14 8/17 23/14 23/16 28/15 28/22 31/25 39/9 49/6 53/9 57/13 58/3 71/24 82/3 82/22 83/16 88/5 88/19 124/11 128/7 128/21 141/8 145/12 begin [8] 6/6 19/18 56/16 63/13 63/18 68/10 72/22</p>
<p>B</p> <p>back [27] 9/16 18/19 19/3 19/9 19/9 22/1 23/25 27/1 38/19 41/2 56/11 67/12 71/21 92/10 97/9 98/19 110/19 125/9 125/22 134/12 134/21 134/25 135/4 135/5 135/7 135/14 137/15 backward [2] 73/15 73/17 backwards [1] 91/3 BAKST [3] 2/5 5/14 129/8 balance [1] 31/16 banc [2] 135/17 135/25 bar [27] 7/8 24/3 24/5 24/10 24/18 24/22 25/1 80/23 80/24 80/25 81/1 83/6 83/6 83/23 87/11</p>		

<p>B</p> <p>begin... [1] 83/10</p> <p>beginning [2] 22/20 23/10</p> <p>begins [3] 40/1 104/19 107/5</p> <p>begun [1] 107/7</p> <p>behalf [5] 5/9 5/13 5/14 5/16 45/24</p> <p>being [31] 5/23 17/19 19/1 19/3 27/23 30/13 43/20 45/8 55/4 66/8 67/11 73/3 78/1 86/12 87/6 92/16 103/2 110/6 112/21 113/23 114/22 119/10 120/15 120/21 122/7 124/6 134/3 134/6 139/4 140/2 140/22</p> <p>believe [15] 57/22 66/19 76/25 85/1 99/17 101/16 102/7 104/12 105/16 107/17 108/4 115/1 127/3 135/17 143/22</p> <p>below [1] 70/14</p> <p>Ben [1] 5/22</p> <p>benefit [1] 139/4</p> <p>BENJAMIN [1] 1/22</p> <p>best [2] 146/7 146/11</p> <p>better [2] 40/20 143/21</p> <p>between [33] 9/24 12/4 16/12 18/1 18/22 19/24 21/18 22/9 23/6 23/11 25/17 28/7 31/3 40/22 43/5 45/10 45/11 49/21 55/21 71/13 83/18 103/23 106/25 116/4 122/19 123/21 126/14 127/23 129/20 129/21 133/18 142/15 142/18</p> <p>beyond [10] 38/24 57/4 74/14 74/21 89/24 92/6 94/13 95/24 96/6 119/4</p> <p>big [2] 28/19 30/5</p> <p>binary [7] 26/18 54/22</p>	<p>55/1 107/16 107/24 108/8 108/12</p> <p>bind [3] 116/21 116/24 134/9</p> <p>bit [4] 24/9 36/16 118/1 145/19</p> <p>black [1] 62/5</p> <p>blink [1] 26/1</p> <p>blue [2] 17/10 62/2</p> <p>blueprints [1] 16/11</p> <p>bolt [81] 15/20 18/17 19/19 23/17 23/20 24/12 24/17 24/25 25/1 28/1 36/19 43/12 43/13 60/14 60/17 62/7 63/13 63/16 63/17 63/23 64/3 66/8 66/9 66/13 66/22 69/18 72/21 72/22 72/25 73/14 73/15 73/17 75/6 75/15 75/21 75/24 76/7 76/11 77/14 77/17 77/21 77/23 78/12 78/20 78/22 79/6 79/7 79/9 80/14 83/10 83/14 83/25 84/2 84/10 87/4 87/24 88/2 88/5 88/16 89/12 89/14 90/23 91/2 91/7 91/17 91/22 92/2 118/8 120/21 121/5 121/6 121/14 123/12 123/21 125/4 125/9 125/11 125/15 125/18 125/22 126/6</p> <p>bolts [1] 98/6</p> <p>both [14] 10/11 22/2 22/8 28/21 29/17 94/18 96/23 97/1 97/15 112/23 115/1 128/3 128/6 134/5</p> <p>Botswana [1] 9/23</p> <p>bottom [7] 17/11 17/19 19/12 20/8 23/7 29/18 39/22</p> <p>bow [1] 107/15</p> <p>box [1] 64/9</p>	<p>boy [1] 31/13</p> <p>branch [4] 27/8 32/7 32/8 32/22</p> <p>branches [1] 32/9</p> <p>brand [2] 11/2 48/2</p> <p>brand-name [1] 48/2</p> <p>breach [1] 118/12</p> <p>break [8] 18/1 28/7 28/11 40/7 98/17 98/18 98/19 128/7</p> <p>breaks [1] 20/7</p> <p>Breed [3] 21/2 35/3 39/17</p> <p>brief [7] 6/3 107/15 107/16 117/4 133/1 137/24 145/3</p> <p>briefing [1] 132/18</p> <p>briefly [7] 44/9 53/22 58/25 93/20 129/6 133/15 137/22</p> <p>bring [1] 27/7</p> <p>broad [2] 58/12 137/25</p> <p>broader [5] 138/3 138/6 138/23 143/24 144/14</p> <p>broadly [1] 94/12</p> <p>brought [1] 129/15</p> <p>Budapest [1] 9/22</p> <p>build [2] 30/7 50/8</p> <p>building [1] 49/18</p> <p>bullet [4] 82/17 109/1 118/10 120/18</p> <p>bump [2] 101/24 102/5</p> <p>bumped [1] 128/4</p> <p>bunch [1] 38/5</p> <p>burden [1] 129/18</p> <p>Bureau [1] 8/15</p> <p>burst [3] 119/17 121/23 135/7</p> <p>Business [1] 146/20</p> <p>but [88] 8/21 12/23 14/19 15/15 16/13 16/19 19/7 19/16 24/21 24/22 26/5 28/6 28/18 28/19 30/6</p>
--	--	--

<p>B</p> <p>but... [73] 30/8 32/3 33/6 34/17 35/1 35/11 36/13 37/3 37/17 37/25 39/10 43/4 43/16 45/1 50/14 54/6 55/23 57/3 66/4 66/19 70/4 71/10 73/10 83/2 84/17 85/10 87/2 88/2 90/1 94/3 97/8 98/7 99/20 102/8 103/8 105/5 107/4 108/13 109/24 109/25 111/7 112/6 112/19 112/24 112/25 113/19 114/22 114/25 116/23 119/13 119/20 121/19 122/22 125/17 127/11 128/3 128/5 128/7 129/20 130/4 131/9 132/13 132/17 134/8 134/24 135/15 135/19 136/14 140/11 140/23 141/21 142/12 145/18</p> <p>button [1] 23/8 buy [1] 144/11 bypass [1] 78/5 bypassed [1] 123/1 bypasses [2] 123/15 123/24</p>	<p>came [3] 10/8 53/22 140/7 camming [2] 71/3 71/6 Camp [1] 130/9 can [102] 13/15 14/10 15/11 15/24 16/17 17/8 17/16 20/5 22/15 23/3 23/6 24/23 26/2 26/9 26/25 27/7 27/11 27/13 29/7 29/7 30/10 33/11 34/15 38/7 38/21 39/24 40/6 40/10 40/13 40/17 40/19 44/4 45/18 49/24 52/24 53/7 53/13 55/8 64/17 64/19 64/21 70/24 71/1 73/2 73/10 73/12 73/20 75/4 75/23 76/20 77/9 77/11 77/22 78/1 78/3 79/5 79/24 83/13 83/17 85/1 85/6 85/9 88/16 90/10 90/20 91/6 91/10 91/10 92/1 92/17 95/3 95/4 96/19 97/4 97/6 98/18 102/15 107/25 108/9 109/22 109/23 109/25 111/2 111/5 111/21 112/21 114/16 119/21 120/5 123/2 124/14 124/24 128/11 128/18 128/21 129/1 131/7 131/17 134/1 135/7 142/12 145/17</p> <p>can't [12] 45/13 45/14 45/17 109/21 110/13 110/17 110/19 110/22 110/24 121/2 128/5 131/10</p> <p>cannot [10] 19/5 24/11 64/18 64/20 81/5 109/22 129/10 129/19 135/4 138/15</p> <p>capable [3] 66/23 116/15 130/1</p> <p>capacity [2] 10/19 101/10</p> <p>capture [1] 109/7</p>	<p>captured [5] 19/16 74/7 74/10 112/3 112/6</p> <p>captures [3] 44/1 118/24 122/12</p> <p>care [1] 143/11</p> <p>cares [1] 143/12</p> <p>Carey [1] 144/19</p> <p>Cargill [17] 102/4 127/8 127/22 128/11 130/9 130/19 130/19 133/9 135/11 137/18 139/10 139/12 140/18 140/18 140/23 141/8 143/2</p> <p>carrier [65] 18/17 19/19 23/18 23/20 24/12 24/17 24/25 25/1 28/1 36/20 60/14 62/7 63/13 63/16 63/17 63/23 64/3 66/22 69/18 72/21 72/22 72/25 73/14 73/15 73/17 75/15 75/21 75/24 76/11 77/14 77/17 77/21 77/23 78/12 78/20 78/22 79/6 79/7 79/9 80/14 83/10 83/14 84/1 84/2 84/11 87/4 87/24 88/2 89/14 90/23 91/2 91/7 91/17 91/23 92/2 121/5 121/6 123/12 123/21 125/4 125/9 125/11 125/15 125/22 126/6</p> <p>cartridge [14] 14/14 14/15 14/15 14/17 14/20 14/23 18/16 19/20 24/13 36/17 108/25 120/24 121/9 121/12</p> <p>case [19] 1/6 5/5 6/8 6/14 20/17 33/21 34/5 37/2 39/18 43/16 47/9 54/25 100/4 101/15 102/4 120/24 121/1 142/11 145/12</p> <p>cases [1] 33/3</p> <p>catch [2] 61/3 80/1</p>
<p>C</p> <p>CA [1] 1/17</p> <p>Cabela's [1] 8/12</p> <p>cable [1] 132/18</p> <p>caliber [2] 16/13 51/15</p> <p>call [7] 6/1 6/17 16/9 45/24 58/8 96/24 117/3</p> <p>called [17] 9/12 14/12 16/5 18/23 20/21 24/3 24/15 26/18 26/22 26/23 59/14 69/21 70/10 102/4 111/18 121/10 121/11</p> <p>calls [1] 46/11</p>		

<p>C</p> <p>catches [1] 125/10</p> <p>category [3] 14/12 58/11 115/3</p> <p>caught [2] 123/10 134/24</p> <p>cause [15] 3/8 20/3 20/5 27/2 30/12 37/11 37/15 37/22 38/17 82/17 84/7 103/24 105/18 107/1 110/22</p> <p>caused [2] 83/3 86/22</p> <p>causes [14] 17/13 17/22 20/3 23/25 84/17 103/2 103/6 107/20 111/4 116/20 123/1 126/19 137/19 143/1</p> <p>causing [4] 111/2 116/24 126/11 126/13</p> <p>cease [1] 56/6</p> <p>ceases [1] 41/24</p> <p>center [3] 13/6 29/14 80/9</p> <p>certain [8] 38/13 42/8 43/21 48/2 49/19 58/11 58/13 107/10</p> <p>certainly [7] 10/1 25/16 26/16 27/12 135/19 136/21 143/21</p> <p>certificate [3] 51/9 51/12 146/2</p> <p>Certificate.....146 [1] 4/16</p> <p>certifications [3] 13/2 49/11 50/14</p> <p>certified [1] 13/4</p> <p>certify [2] 146/4 146/12</p> <p>cetera [3] 36/4 36/5 36/5</p> <p>CFR [3] 93/21 104/23 140/13</p> <p>chamber [9] 14/14 14/16 14/18 14/23 18/16 78/23 118/11 120/25 121/12</p> <p>chambered [2] 14/20 125/13</p>	<p>chambering [6] 25/25 76/1 119/1 121/11 122/14 125/23</p> <p>chance [2] 17/3 90/9</p> <p>change [5] 98/13 105/24 105/25 127/17 142/22</p> <p>changed [1] 101/21</p> <p>characterize [1] 104/22</p> <p>charge [1] 9/13</p> <p>charged [1] 140/5</p> <p>Chicago [2] 8/22 32/1</p> <p>chief [1] 9/4</p> <p>child [1] 85/9</p> <p>children [1] 85/10</p> <p>chip [1] 95/7</p> <p>choice [1] 132/22</p> <p>choose [1] 38/20</p> <p>chooses [1] 26/10</p> <p>chute [2] 54/15 134/12</p> <p>CIRAVOLO [28] 4/12 45/25 46/11 46/21 51/18 51/25 52/7 52/11 52/16 57/12 61/19 76/18 76/20 99/7 117/16 117/17 126/19 130/7 131/4 131/12 131/16 131/24 132/3 132/10 134/18 135/9 140/21 141/18</p> <p>Ciravolo.....52 [1] 2/16</p> <p>circle [1] 9/16</p> <p>Circuit [8] 102/8 130/4 135/11 138/25 139/2 140/23 141/5 141/9</p> <p>cite [1] 141/13</p> <p>cited [1] 141/3</p> <p>citizens [1] 140/2</p> <p>CIVIL [1] 2/6</p> <p>civilian [1] 16/7</p> <p>claims [1] 143/22</p> <p>clarification [1] 66/6</p> <p>clarify [3] 104/9 120/5 136/16</p> <p>class [2] 10/25 50/16</p>	<p>classic [1] 94/16</p> <p>classification [24] 13/23 14/6 32/25 48/4 48/8 48/22 48/25 52/13 52/17 53/16 54/3 54/3 54/19 57/13 92/13 93/20 93/24 99/11 99/18 105/4 105/8 116/2 129/23 130/8</p> <p>classified [4] 48/15 96/11 96/17 100/5</p> <p>classifies [1] 99/10</p> <p>classify [2] 99/17 100/6</p> <p>classifying [1] 99/15</p> <p>clear [20] 15/4 42/13 42/20 60/5 61/7 66/3 70/5 79/1 82/13 84/7 87/14 88/13 92/5 92/10 115/16 121/2 122/3 130/19 133/10 134/3</p> <p>clearance [1] 70/23</p> <p>clearly [2] 12/6 134/18</p> <p>Clendenden [1] 5/16</p> <p>CLENDENEN [1] 2/4</p> <p>Clendenen.....31 [1] 4/7</p> <p>Clendenen.....127 [1] 4/10</p> <p>click [1] 91/14</p> <p>clog [1] 34/15</p> <p>closing [1] 140/20</p> <p>cloud [2] 119/20 122/3</p> <p>CM [1] 53/12</p> <p>CM/ECF [1] 53/12</p> <p>coast [2] 7/19 7/20</p> <p>cocked [7] 15/22 17/21 18/19 18/21 18/25 19/1 44/2</p> <p>cocking [4] 25/24 63/20 121/4 122/13</p> <p>cocks [2] 94/18 95/1</p> <p>cold [1] 138/16</p> <p>colleague [2] 129/7 143/14</p>
--	---	---

C	60/13 65/9 71/7 85/13	consists [1] 7/17
colleagues [2] 5/21 12/10	116/22 118/21	constant [21] 37/5 38/8
Collection [1] 47/19	completes [1] 95/15	56/3 56/7 74/14 74/18
collectors [1] 8/1	compliance [1] 8/11	74/21 78/9 78/11 79/2
color [1] 62/8	comply [1] 146/13	86/1 89/25 92/6 105/21
colored [3] 18/17 69/25	component [11] 59/5 59/11	126/10 126/10 127/4
80/23	59/13 62/2 62/5 62/11	130/23 132/20 132/23
Colt [3] 11/4 11/7 58/9	69/14 69/17 80/9 80/12	133/8
COLUMBO [3] 1/15 5/9	103/23	constitute [1] 101/14
5/10	components [6] 11/10 17/2	construction [1] 143/4
Columbo.....9	81/9 81/10 97/12 115/18	consultant [1] 7/13
9 [1] 4/14	computer [1] 3/9	consulted [1] 100/16
Columbo.....06	computerized [1] 3/9	contact [11] 24/18 40/7
[1] 4/6	Con [6] 26/23 55/13 55/15	40/10 40/13 64/6 75/11
Columbo.....44	55/16 56/2 56/4	83/16 83/19 84/4 91/11
[1] 4/8	concentrating [1] 27/18	91/24
Columbo.....117	concept [1] 140/20	contain [6] 54/15 55/19
[1] 4/9	conclude [2] 54/14 124/10	57/9 59/20 88/16 88/20
come [9] 10/20 64/6 84/4	concluded [6] 101/24 102/8	content [2] 7/16 100/20
89/12 91/11 124/14 124/22	135/11 135/12 135/16	context [2] 132/10 132/11
124/25 135/4	145/22	continually [1] 119/5
comes [13] 15/25 34/17	concluding [1] 128/1	continue [35] 30/4 37/8
45/7 76/2 78/24 83/16	conclusion [7] 21/12 53/23	41/16 53/25 56/4 56/9
104/2 109/15 111/11 125/15	57/7 98/13 102/23 126/20	64/5 73/15 74/13 74/16
125/18 135/3 137/18	127/17	74/20 75/24 79/12 81/9
commerce [2] 33/16 144/8	conclusions [2] 53/18	84/3 89/21 89/22 90/4
commercial [2] 16/6 32/9	53/20	93/12 93/15 93/18 97/11
committing [1] 140/3	conducted [1] 54/2	97/17 110/24 111/5 116/9
common [2] 58/3 95/6	Conference [1] 146/14	116/24 122/14 123/2
commonly [1] 16/15	configuration [5] 16/2	130/15 130/24 131/7 131/17
companies [1] 16/7	69/12 71/23 77/5 81/20	131/19 133/12
company [5] 11/5 20/22	configured [4] 95/3 95/10	continued [2] 92/18 124/1
21/3 26/22 58/8	95/25 96/7	continues [15] 84/1 118/25
compared [1] 41/5	confront [1] 140/8	118/25 119/1 119/1 119/2
comparison [1] 15/11	connection [1] 128/8	121/12 122/12 122/13
competing [1] 139/5	conscious [2] 133/4 140/11	122/13 122/13 125/11
complete [8] 26/8 36/2	consequences [1] 145/10	125/12 132/24 133/5
55/23 55/25 57/19 63/19	consider [1] 11/25	continuing [5] 25/5 60/1
96/3 108/17	considerably [1] 42/9	80/21 82/2 92/22
completed [3] 10/15 107/4	consideration [1] 12/5	continuous [11] 40/10
121/16	consistency [2] 100/22	40/13 106/9 106/14 119/17
completely [8] 24/14 50/8	100/23	124/2 125/17 127/4 137/3

C	106/4 106/12 106/16	courts [1] 139/9
continuous... [2] 140/9	107/14 107/20 108/19	cover [3] 50/9 95/8 138/1
140/21	108/24 109/12 110/2 110/10	covered [1] 9/14
continuously [1] 97/6	110/15 110/21 111/12 111/16	covers [1] 140/16
contracted [1] 8/6	111/18 111/23 111/24 111/25	COVID [1] 146/8
contrary [1] 129/23	112/2 112/8 112/16 112/23	COVID-19 [1] 146/8
contrast [2] 141/16 142/3	113/5 113/14 113/21 114/23	cowrite [1] 12/11
control [7] 18/4 23/2 53/6	115/5 134/2 134/16 135/1	create [1] 95/21
69/2 69/12 76/23 81/5	137/11 137/17 146/5	created [1] 84/10
controlled [2] 55/8 115/18	correspondence [1] 47/17	creates [2] 95/18 130/20
controlling [3] 135/12	cosmetic [1] 16/12	crime [2] 33/19 140/3
135/19 135/23	could [27] 10/10 29/4 35/5	crimes [1] 140/5
conventional [1] 22/25	35/11 39/21 46/22 48/5	criminal [2] 32/10 47/9
conversion [2] 95/6 95/14	51/20 53/9 53/22 54/25	critical [2] 118/4 118/8
convert [1] 114/16	61/19 63/21 64/8 65/6	Cross [4] 4/7 4/14 31/19
Coordinator [1] 9/12	68/16 72/13 72/24 82/7	99/5
copied [1] 100/19	84/16 87/2 88/9 97/25	Cross-Examination [4] 4/7
copies [1] 39/4	106/21 114/6 114/18 135/14	4/14 31/19 99/5
copy [4] 53/11 53/13 53/14	couldn't [1] 50/20	crystal [1] 70/5
57/19	counsel [3] 90/9 139/23	culmination [2] 48/6 60/16
corner [7] 17/18 61/5	141/17	current [1] 46/22
61/16 68/20 68/21 75/2	counsel's [1] 140/20	currently [3] 47/5 47/14
79/22	count [3] 29/16 30/7 99/2	77/5
corporate [1] 8/11	counterpart [1] 16/16	curriculum [1] 12/14
correct [102] 15/8 15/10	countless [1] 13/18	curveball [1] 106/8
32/7 35/6 35/9 35/18	country [1] 145/6	custom [1] 49/18
35/21 36/8 36/14 39/13	couple [4] 8/5 127/12	customizing [1] 49/19
41/21 42/2 42/7 42/19	137/22 143/17	Customs [1] 8/9
43/9 43/19 43/21 49/1	course [9] 7/21 11/11 14/18	cut [1] 70/23
57/5 57/17 60/6 66/5	25/4 48/21 61/4 121/2	cutaway [9] 2/18 17/1
67/14 67/20 67/23 68/6	125/3 125/25	76/17 77/4 77/9 77/15
68/7 68/11 69/8 70/6 70/7	court [40] 1/1 1/12 3/2 3/2	90/8 90/14 91/3
71/11 71/16 77/15 77/16	6/2 13/16 13/18 13/19 14/2	CV [5] 1/6 2/16 5/6 52/1
77/19 78/15 79/4 80/15	17/16 31/17 32/2 33/7	52/6
82/20 86/3 86/13 87/16	33/21 34/9 35/1 39/13	cycle [62] 12/3 12/5 24/8
87/19 87/25 89/1 90/5	46/22 48/5 49/24 60/20	25/23 25/24 26/2 26/8
91/4 91/19 92/7 92/8	68/13 79/18 90/10 90/20	26/10 35/24 36/2 36/11
100/18 101/3 101/5 101/8	92/1 96/19 97/25 98/18	37/12 37/18 38/25 41/19
101/19 101/22 101/25 102/3	98/22 118/23 124/24	41/23 42/10 60/1 60/21
102/10 102/14 102/22	129/6 129/13 136/1 138/25	63/20 68/1 68/14 71/7
103/21 104/6 104/25 105/4	139/14 141/2 146/13 146/18	71/21 75/25 77/4 79/19
105/13 105/16 105/23	Court's [1] 6/8	80/21 81/17 81/17 82/22

<p>C cycle... [31] 89/20 89/21 89/22 90/14 115/21 115/25 118/16 118/20 119/3 119/6 119/6 119/13 119/14 119/15 119/18 120/4 120/9 120/18 120/20 120/23 121/16 121/20 121/25 122/10 122/12 122/15 123/8 123/19 131/7 132/8 134/20 cylindrical [3] 62/8 69/20 70/14</p>	<p>136/1 136/17 definitely [1] 11/16 definition [44] 10/5 10/14 10/22 11/13 11/14 11/18 11/19 43/19 44/20 58/22 69/8 93/23 93/25 94/2 94/9 95/19 98/1 101/18 102/11 102/20 104/23 105/2 105/5 105/6 105/10 105/14 107/12 113/24 114/2 114/21 117/20 122/5 124/4 127/5 127/7 130/7 130/11 130/13 135/21 140/19 143/2 143/3 143/4 143/8 degree [2] 51/9 104/4 delete [1] 106/2 demanding [1] 140/4 demonstrate [2] 138/11 138/15 demonstrated [1] 145/3 demonstration [1] 124/25 DEPARTMENT [1] 2/5 departments [1] 10/12 dependent [1] 119/9 depending [3] 37/17 61/8 119/11 depends [3] 102/24 103/14 116/19 depict [4] 61/23 69/3 80/5 81/19 depicted [1] 83/2 depression [1] 140/10 describe [8] 14/10 15/11 23/4 29/7 56/11 75/4 96/19 124/17 described [14] 15/5 20/10 25/14 28/24 63/5 67/13 72/14 82/9 89/24 95/12 123/15 124/12 132/17 141/9 described in [1] 124/12 describes [2] 100/25 104/23</p>	<p>describing [3] 22/21 107/9 110/10 description [1] 52/2 design [15] 10/9 12/2 40/2 45/14 47/20 47/24 49/9 49/17 50/7 65/7 119/9 119/11 131/3 131/5 140/25 designated [2] 12/11 12/13 designed [35] 30/4 37/9 43/17 45/13 55/1 56/20 56/21 59/11 60/1 60/4 60/5 65/7 76/9 81/8 84/14 84/18 85/3 85/4 85/5 85/11 85/14 85/16 86/9 87/20 90/6 96/23 108/9 109/6 109/10 109/14 113/14 113/15 118/3 118/7 123/4 destroy [1] 118/13 destructive [1] 48/17 determination [1] 11/18 determinative [1] 105/21 determine [7] 11/14 33/23 34/19 57/1 99/22 104/4 136/8 determined [2] 99/20 135/11 detonate [1] 88/12 develop [2] 7/12 47/11 device [14] 20/18 20/20 34/10 48/7 48/9 52/21 52/25 54/20 65/13 95/7 95/14 99/10 104/4 105/22 devices [10] 22/8 26/13 26/17 48/17 54/4 54/7 54/8 54/15 55/22 138/14 DHILLON [2] 1/16 1/19 diagram [2] 17/1 22/24 diagrams [1] 21/10 did [51] 8/10 8/19 9/6 9/11 9/16 9/19 9/20 10/2 11/7 11/8 11/9 11/14 12/15 13/23 21/4 21/5 21/6</p>
<p>D D.C [1] 2/7 damage [1] 88/22 Dan [1] 6/18 DANIEL [2] 4/5 39/13 dark [1] 17/10 DAVID [2] 1/18 5/22 DAVIS [1] 1/22 day [6] 31/25 32/2 32/3 57/20 57/24 146/15 dead [1] 42/12 dealer [1] 8/13 dealers [1] 7/25 decide [2] 106/10 139/17 decision [7] 6/8 100/5 127/8 130/19 133/4 135/11 139/7 declaring [1] 140/2 deemed [1] 13/17 defendants [14] 1/9 2/4 5/11 5/13 5/15 5/17 6/7 45/24 45/24 52/5 52/11 98/15 144/15 145/4 defendants' [8] 2/15 4/11 52/6 52/8 52/10 58/1 76/24 77/2 define [3] 102/12 130/3 135/25 defined [4] 94/12 96/5</p>		

<p>D did... [34] 32/17 32/24 33/5 33/25 39/16 43/8 50/19 50/22 50/24 51/1 51/2 51/9 53/18 53/19 54/14 56/12 82/25 84/20 84/23 86/18 92/5 92/8 93/20 93/23 97/19 97/22 98/12 99/19 100/17 103/15 105/1 113/19 126/12 140/18 didn't [5] 9/8 38/12 61/14 132/16 134/23 differ [1] 21/16 difference [9] 9/24 21/18 40/22 49/21 49/24 131/21 131/23 142/18 142/21 differences [3] 16/12 71/13 124/12 different [23] 7/18 10/15 16/8 16/17 33/3 60/16 65/4 65/6 67/4 74/2 74/6 84/21 85/13 85/17 92/16 98/5 98/8 106/22 111/25 123/13 131/2 132/12 136/22 differently [2] 92/24 101/2 direct [6] 4/6 4/13 6/23 7/12 46/19 105/1 directly [2] 137/18 145/17 director [2] 7/4 7/10 disagree [5] 97/25 99/14 136/14 136/21 139/10 disagreed [1] 102/8 disagreeing [1] 136/20 disagreement [3] 129/19 129/20 133/22 Disappointingly [1] 32/2 disassemble [1] 56/19 disconnect [42] 18/24 19/2 19/4 19/10 19/15 59/25 60/6 60/8 60/11</p>	<p>60/12 62/10 64/7 64/10 64/16 64/22 66/17 66/20 71/5 71/6 71/9 71/14 71/17 74/8 75/10 80/17 80/19 97/4 97/12 109/7 118/20 118/23 122/6 122/10 122/11 122/16 122/17 131/6 131/9 131/11 131/14 131/16 132/3 discuss [1] 58/3 discussed [2] 21/17 119/10 discussing [2] 54/23 55/20 discussion [2] 20/17 127/23 disengage [11] 23/15 26/6 29/24 30/11 63/1 72/7 72/10 82/4 89/18 110/7 120/12 disengaged [4] 24/22 63/7 82/10 118/9 disengagement [3] 28/20 124/6 126/14 disengages [5] 22/6 27/24 94/25 94/25 97/11 dispute [8] 58/21 67/16 69/6 69/9 95/17 96/16 133/18 135/18 disputes [1] 134/18 distance [2] 22/6 28/5 distinct [1] 28/19 DISTRICT [12] 1/1 1/2 1/12 13/18 39/18 57/16 138/24 144/17 144/25 145/2 145/14 146/18 dive [1] 58/3 division [10] 1/3 2/6 8/22 9/11 9/14 31/22 32/3 32/5 32/11 146/19 do [94] 6/21 7/10 7/10 7/14 7/15 8/10 9/24 13/1 14/19 16/24 17/3 17/4 17/7 19/22 22/22 25/5 25/21 32/14 34/9 34/23 35/15</p>	<p>36/10 36/11 44/13 44/17 44/23 46/15 47/24 48/22 48/23 49/2 51/18 51/22 52/23 53/5 53/9 54/2 54/6 54/7 55/6 63/16 66/2 66/24 67/5 67/8 69/3 70/21 72/2 74/8 74/22 76/13 76/14 77/6 81/22 84/24 84/25 86/21 89/24 90/2 90/17 90/25 92/5 92/25 93/2 93/5 93/8 95/5 96/14 97/6 97/23 97/24 103/9 104/13 104/14 104/19 109/10 109/14 110/15 110/18 115/16 116/13 122/21 122/24 124/3 124/22 127/18 128/7 128/11 128/24 129/19 131/19 132/8 141/17 143/1 doctors [1] 7/25 document [9] 39/5 39/9 39/12 39/15 39/17 51/24 51/25 53/15 57/18 documents [1] 48/7 does [143] 11/17 12/1 13/7 13/10 15/5 21/16 22/8 25/13 25/16 25/19 25/20 25/22 26/15 29/19 30/9 30/21 31/2 31/5 34/2 35/8 41/7 41/11 41/14 42/18 42/25 44/6 53/2 55/7 55/22 56/11 56/13 57/7 57/11 57/18 59/7 59/8 59/20 59/21 59/22 59/23 60/8 60/9 60/10 60/12 61/23 63/4 63/6 63/22 63/24 64/9 64/12 66/19 66/21 66/24 66/25 69/10 70/5 70/8 70/9 70/20 70/23 71/3 71/17 71/18 71/19 71/20 72/13 72/15</p>
--	---	---

<p>D does... [75] 72/24 73/2 74/5 76/12 79/11 80/5 80/7 81/3 81/12 81/13 81/18 82/9 82/12 86/9 86/15 86/19 88/11 89/3 89/24 92/10 92/12 92/24 93/5 93/8 93/22 94/21 94/24 95/5 95/11 95/13 95/13 95/13 95/15 95/21 95/22 95/25 96/2 96/3 96/7 96/10 102/12 104/4 104/7 108/18 113/2 114/24 115/16 115/21 115/24 116/1 116/2 116/5 117/20 118/7 118/8 122/5 122/17 122/21 122/22 122/22 122/24 122/25 123/7 123/9 125/19 127/16 130/3 131/14 133/8 134/14 134/19 142/8 142/9 142/22 143/11 doesn't [16] 17/4 18/9 26/3 41/13 43/13 44/1 53/4 71/9 113/4 118/4 118/6 118/8 118/22 125/6 126/15 131/15 doing [9] 8/23 30/18 49/19 79/1 92/15 92/21 103/20 103/22 121/8 don't [41] 18/4 29/8 30/18 32/8 34/4 34/7 34/14 34/20 35/2 35/5 35/12 35/15 35/16 36/12 37/8 37/10 37/12 37/13 37/17 39/19 41/22 43/14 67/9 98/18 99/15 99/17 100/2 103/25 108/4 114/13 114/19 116/22 127/7 128/18 133/20 136/4 136/20 137/9 137/13 143/21 145/18 done [7] 7/20 25/12 33/19</p>	<p>53/9 65/10 105/7 109/9 doors [1] 139/25 double [2] 94/17 94/19 double-action [1] 94/17 doubt [1] 126/20 down [24] 17/25 18/19 20/7 21/25 23/14 23/23 23/24 27/24 28/2 29/18 36/20 39/22 46/7 64/6 71/6 75/13 77/13 78/2 82/18 84/3 84/5 117/2 117/5 137/8 downward [3] 18/14 70/25 73/3 downwards [2] 63/1 63/19 drive [1] 36/19 drop [4] 52/21 52/23 52/24 95/1 drop-in [2] 52/21 52/24 drop-safety [1] 95/1 dropping [1] 110/8 due [2] 30/3 146/8 during [10] 9/3 29/19 89/23 96/13 96/20 115/21 115/25 132/1 132/7 134/19 duties [4] 9/6 9/9 9/17 47/4 duty [1] 31/23 DVD [2] 19/14 30/16 DVD/audio [2] 19/14 30/16 <hr/> E each [38] 9/21 12/4 22/9 25/12 25/17 27/6 30/11 30/14 31/3 31/8 45/10 45/11 45/16 55/4 55/6 56/18 56/20 74/1 75/23 82/4 83/19 95/12 102/20 103/5 107/20 112/4 112/7 119/19 123/7 123/10 124/8 124/9 138/12 141/25 142/9 142/15 142/25 143/13 earlier [12] 11/12 41/20</p>	<p>60/25 61/13 61/22 66/19 70/4 80/3 84/15 88/21 97/19 98/6 early [3] 16/4 58/9 141/8 ease [2] 113/22 114/2 easiest [1] 68/19 easily [3] 13/22 85/5 85/14 Eastern [2] 39/18 57/15 easy [1] 126/7 ECF [2] 53/12 61/5 educational [1] 52/3 effect [2] 114/18 116/7 effected [1] 123/20 efficiency [1] 27/14 effort [1] 138/1 Egan [1] 57/24 EGGLESTON [1] 1/22 eight [10] 8/6 12/6 25/23 118/16 119/7 119/8 119/9 119/15 120/17 135/16 EISENHOWER [1] 1/20 either [6] 14/21 22/15 37/8 40/7 79/14 118/22 ejection [6] 25/25 36/4 118/25 120/25 121/1 122/13 ejector [1] 60/18 element [2] 33/14 104/2 elements [2] 11/19 11/23 elevate [1] 139/12 eliminates [1] 131/6 elite [1] 51/6 else [2] 10/7 98/25 elsewhere [1] 136/23 employed [3] 6/25 12/20 140/22 employee [2] 52/17 101/10 employing [1] 123/9 empty [1] 120/24 en [2] 135/17 135/25 enable [1] 26/14 encompass [3] 94/12 95/23</p>
--	---	--

<p>E encompass... [1] 96/5 encounter [1] 10/19 end [5] 17/15 19/6 23/7 45/8 125/10 ends [1] 48/19 energy [2] 78/18 131/18 enforcement [19] 7/9 8/9 9/22 12/22 13/4 13/5 46/24 47/1 47/9 47/12 47/15 48/24 49/5 50/11 50/13 99/16 138/1 138/9 138/20 engage [8] 18/24 78/5 112/15 128/5 135/2 135/6 144/7 145/18 engaged [14] 17/18 24/10 28/10 64/7 64/16 73/8 73/9 73/25 75/9 75/22 77/12 88/19 90/23 109/3 engagement [14] 17/17 17/20 18/1 18/14 18/22 20/8 23/6 23/11 25/2 28/7 28/11 75/13 78/2 110/8 engages [4] 113/7 115/15 130/21 131/9 engaging [3] 64/10 91/14 131/11 English [1] 33/17 enough [25] 20/7 22/3 22/6 27/24 37/13 37/14 37/15 37/16 38/17 40/12 41/6 41/10 41/23 42/21 42/24 43/3 43/4 43/5 44/25 45/1 55/23 86/6 88/15 88/16 120/12 ensure [2] 66/24 67/5 ensuring [1] 81/5 enter [1] 78/24 enterprises [1] 16/7 entertain [1] 6/3 entire [3] 8/21 92/19</p>	<p>127/10 entirely [1] 134/17 entities [1] 138/18 entitled [2] 104/18 146/6 equipped [12] 56/8 60/22 61/24 69/11 74/20 76/22 79/19 90/13 102/16 103/10 131/2 137/4 equivalent [1] 123/23 essentially [2] 116/12 139/12 establish [1] 129/22 estimate [1] 35/8 et [5] 1/5 1/8 36/4 36/4 36/5 Eugene [1] 58/8 even [26] 12/2 12/2 15/14 32/1 41/7 41/11 42/25 49/6 49/10 84/12 94/15 96/1 106/14 106/15 110/13 119/16 119/16 123/16 133/23 137/8 137/14 139/13 140/13 141/8 144/3 144/18 event [1] 106/14 events [1] 89/23 eventually [5] 64/5 66/9 76/2 78/13 81/9 ever [8] 9/20 13/13 13/15 14/2 31/21 32/12 32/21 32/24 every [26] 7/23 12/1 14/15 25/14 26/5 26/19 27/6 27/22 28/21 30/8 31/6 45/7 48/15 94/23 95/14 96/2 98/7 111/13 112/1 118/15 122/22 124/7 131/22 141/22 142/1 142/25 everybody [1] 98/25 everything [2] 56/12 121/3 evidence [8] 6/4 29/2</p>	<p>31/14 47/8 52/6 52/10 58/1 77/2 EVIDENTIARY [1] 1/11 exact [1] 89/13 Exactly [1] 135/1 examination [17] 4/6 4/7 4/8 4/9 4/10 4/13 4/14 4/15 6/23 31/19 44/10 46/19 48/6 99/5 115/12 117/14 127/1 examine [8] 20/23 47/5 47/6 47/8 56/12 56/14 56/16 56/17 examined [6] 21/7 21/8 48/13 48/15 48/18 99/13 example [2] 94/16 94/19 examples [1] 26/17 exceed [1] 42/9 excluded [1] 14/2 exercise [1] 144/12 exerted [1] 42/23 exerting [7] 43/3 63/9 63/25 64/13 73/4 83/20 87/14 exhausted [1] 79/16 exhausts [1] 130/25 Exhibit [20] 16/23 16/24 22/18 22/23 27/7 27/9 28/23 28/23 29/4 31/9 31/11 31/14 52/6 52/8 52/10 57/23 58/1 76/25 77/1 77/2 Exhibit 2 [1] 57/23 EXHIBITS [3] 2/11 2/15 29/1 exist [2] 71/9 125/6 existence [1] 129/20 exists [1] 125/7 expel [1] 137/1 expelled [1] 134/11 experience [7] 12/8 13/8 49/9 49/11 50/10 52/3</p>
--	---	--

<p>E experience... [1] 53/2 expert [16] 6/10 6/18 12/10 13/16 13/17 13/20 14/2 14/5 31/16 32/15 33/2 39/12 42/17 49/7 52/12 56/25 expert's [1] 140/14 experts [4] 7/7 129/20 129/21 134/5 explain [17] 10/21 18/8 33/11 35/16 48/5 49/24 53/22 54/25 65/6 76/18 76/20 79/24 85/1 87/2 90/10 97/25 101/15 explained [2] 132/10 135/9 explaining [1] 100/15 explosion [1] 82/17 explosives [3] 12/23 46/25 99/10 extensive [1] 12/8 extent [2] 138/16 138/17 extra [1] 125/5 extracted [1] 121/3 extraction [5] 25/25 36/4 118/24 120/23 122/13 extractor [1] 60/18 extremely [1] 137/25 eye [1] 26/1</p>	<p>factually [1] 101/3 fair [1] 50/4 failure [1] 88/12 fair [6] 51/6 58/10 71/8 71/12 102/23 104/22 fall [2] 72/11 89/19 falls [4] 34/19 88/14 89/20 92/4 false [1] 118/21 familiar [7] 10/14 20/18 20/20 29/5 55/12 59/14 127/9 familiarity [1] 13/8 familiarized [1] 21/10 far [3] 18/11 28/7 50/6 fast [2] 25/20 26/14 FBI [2] 8/5 8/6 FCRR [3] 3/2 146/4 146/17 features [2] 11/25 56/21 federal [12] 2/6 3/2 7/24 8/3 13/5 13/19 33/20 39/13 47/9 47/12 48/8 129/13 feeding [5] 25/25 75/25 119/1 121/10 122/14 fees [1] 146/12 FEO [3] 34/21 99/12 102/4 FEOs [1] 100/17 few [9] 58/3 64/8 102/1 106/7 115/11 124/10 128/3 128/6 137/19 field [4] 8/22 9/11 9/13 49/7 Fifth [8] 102/8 130/4 135/11 138/24 139/2 140/23 141/4 141/8 finally [2] 104/19 139/14 find [1] 45/14 finding [1] 48/19 findings [3] 47/7 48/7 104/18 fine [3] 25/6 26/21 26/24</p>	<p>finger [26] 19/8 20/6 24/21 25/5 44/22 45/19 55/22 62/19 72/5 77/7 77/21 79/6 81/23 85/20 85/24 90/18 91/6 92/1 111/11 116/17 125/20 125/25 133/25 141/11 143/6 143/10 finish [2] 9/8 32/21 fire [129] 18/16 20/4 22/16 24/24 25/3 25/8 26/7 26/14 26/25 29/20 34/24 36/2 36/6 37/14 37/16 38/9 38/14 41/16 44/2 44/17 45/17 53/5 53/25 54/13 55/9 56/4 56/5 56/6 56/9 56/23 62/15 62/16 62/18 64/19 64/21 64/24 65/15 65/18 66/14 66/25 68/3 68/5 68/9 69/1 69/12 69/12 70/18 71/23 72/2 74/12 76/9 76/13 76/23 77/5 77/6 77/8 77/13 81/5 81/7 81/20 81/22 88/6 88/12 88/17 89/21 90/4 90/16 90/17 93/12 93/15 93/18 94/15 95/3 96/1 96/8 96/25 97/5 97/6 97/8 97/12 97/20 98/4 102/13 102/15 106/20 107/3 110/22 111/4 111/8 111/22 112/9 112/19 112/21 113/6 113/16 113/17 113/20 115/17 116/7 116/9 116/23 116/25 118/4 118/6 118/7 119/16 119/17 121/22 121/22 121/24 121/24 123/2 123/19 123/24 125/16 125/24 126/2 126/4 126/14 130/24 132/24 133/5 133/12 134/21 135/7</p>
<p>F F.2d [1] 141/12 F.4th [1] 127/13 fabricate [1] 50/8 fabricators [1] 50/7 fact [12] 9/8 25/20 100/19 101/7 101/9 102/5 105/5 107/23 119/14 123/4 133/7 142/23 factory [2] 60/22 81/12 facts [1] 137/22 factual [1] 133/17</p>		

<p>F</p> <p>fire... [4] 142/5 142/10 142/12 142/25</p> <p>firearm [75] 7/8 7/9 10/6 10/7 10/8 11/1 12/14 12/21 12/22 13/13 14/13 14/20 14/22 15/13 21/8 33/13 33/15 34/3 34/15 34/18 35/20 36/1 36/1 36/7 37/23 38/14 42/19 43/11 43/13 43/24 48/7 48/8 48/16 53/1 53/3 54/9 56/4 56/8 56/8 56/22 59/1 59/3 67/19 67/22 74/19 78/18 79/19 81/10 81/20 82/18 85/3 85/8 87/18 88/22 97/18 103/10 103/24 116/3 118/4 121/2 121/13 129/25 130/25 131/1 131/2 131/11 131/22 131/25 132/24 133/5 134/4 134/9 137/4 137/16 141/10</p> <p>firearm-knowledgeable [1] 10/6</p> <p>firearms [63] 7/1 7/5 7/18 8/16 9/1 9/12 9/13 10/15 11/2 13/2 14/6 14/12 14/13 14/25 15/15 31/22 32/3 32/5 32/6 32/10 32/12 32/22 43/12 43/21 43/22 46/24 46/25 47/1 47/6 47/15 47/16 47/18 47/19 47/23 47/25 48/1 48/1 48/13 48/24 49/5 49/9 49/13 49/17 49/19 49/19 50/5 50/9 50/11 50/13 52/12 52/13 56/25 58/5 80/15 88/24 94/1 94/14 96/11 98/10 99/10 99/16 115/3 118/3</p> <p>fired [47] 12/4 14/17 14/20 14/21 14/23 21/9</p>	<p>25/12 25/15 25/23 26/5 27/6 27/22 28/21 29/18 29/17 30/8 30/14 31/3 31/7 35/6 43/22 44/14 45/2 59/5 67/5 82/19 88/10 93/1 107/1 108/21 109/1 111/13 112/1 112/4 112/7 112/13 114/23 114/24 115/4 121/17 123/17 124/7 141/5 141/9 141/22 141/25 143/13</p> <p>fires [16] 15/1 15/2 15/14 15/15 25/20 26/20 26/20 27/25 30/22 43/18 55/1 55/2 97/3 98/6 102/19 107/17</p> <p>firing [105] 14/14 15/5 17/2 18/15 23/17 25/24 29/24 30/5 35/21 35/22 40/4 40/6 40/15 43/15 53/24 55/3 56/1 59/3 59/6 60/18 60/21 63/8 65/3 66/23 67/3 68/1 68/2 68/10 68/14 69/4 71/24 72/12 72/19 74/15 74/20 77/18 79/12 79/13 79/14 79/19 81/21 82/6 82/11 82/14 82/15 82/22 88/11 88/15 90/14 90/15 91/4 92/21 92/25 93/6 93/9 94/11 94/14 94/18 94/25 95/1 95/2 95/24 96/6 96/13 96/20 97/9 98/9 103/2 103/10 104/1 107/5 107/6 107/22 108/7 108/9 108/12 108/15 108/20 111/3 114/25 115/21 115/25 116/6 119/5 120/4 120/15 120/16 120/17 121/19 122/1 130/6 130/12 130/14 131/7 132/1 132/1 132/7 132/7 134/20 136/5</p>	<p>136/17 136/19 137/5 141/11 142/7</p> <p>first [37] 13/17 14/14 14/16 14/18 14/20 14/21 14/22 14/23 16/23 22/16 29/25 30/25 39/24 40/1 40/3 45/1 50/7 54/19 54/21 58/5 73/14 76/8 86/18 88/10 97/9 120/17 123/5 123/19 123/20 124/19 126/12 128/18 136/7 138/8 143/19 143/23 144/18</p> <p>fit [2] 28/10 128/4</p> <p>fits [1] 120/9</p> <p>five [22] 9/1 12/12 35/14 37/4 37/13 37/14 37/16 37/23 38/1 49/14 50/18 112/9 112/11 112/14 112/15 112/19 112/21 113/6 129/2 142/10 142/11 142/12</p> <p>five pounds [7] 35/14 37/4 37/13 37/14 37/16 37/23 38/1</p> <p>floors [1] 46/9</p> <p>flutters [1] 134/12</p> <p>FN [3] 96/15 96/16 134/22</p> <p>Focus [1] 40/19</p> <p>focused [1] 103/8</p> <p>focusing [1] 61/10</p> <p>follow [7] 46/2 46/4 60/24 61/8 61/14 119/24 140/24</p> <p>follow-on [1] 140/24</p> <p>follow-up [3] 46/2 46/4 119/24</p> <p>following [2] 53/10 120/18</p> <p>force [36] 25/8 34/23 35/4 35/9 35/14 35/19 36/10 36/16 36/20 38/7 38/9 38/14 41/2 41/6 41/10 41/15 41/20 41/25 42/1 42/4 42/15 42/22</p>
---	---	---

F

<p>force... [14] 45/18 54/15 84/18 85/5 85/7 86/20 88/15 111/10 113/22 114/5 114/8 127/16 134/6 142/25 forced [22] 21/19 21/20 21/22 23/20 26/7 26/23 30/13 38/19 54/22 55/16 55/18 57/4 57/8 57/9 84/21 109/20 116/13 116/16 126/1 138/10 138/13 139/8 forceful [1] 41/4 forces [6] 21/23 21/25 28/2 84/5 125/19 125/20 forcibly [2] 65/8 87/6 forcing [1] 28/2 foregoing [2] 146/5 146/6 foreign [1] 33/16 foremost [5] 66/11 76/2 76/7 78/25 89/12 forget [3] 12/23 28/22 103/14 form [1] 15/25 format [1] 146/12 FORT [5] 1/3 1/7 3/3 146/19 146/20 forth [3] 92/11 134/13 137/15 forums [1] 139/4 forward [70] 17/15 18/3 18/15 19/6 19/9 19/9 19/13 19/19 22/1 23/7 23/16 24/9 24/11 24/13 24/14 24/25 28/2 28/3 28/14 30/2 30/13 36/21 40/8 41/5 41/7 41/10 42/22 42/24 54/10 54/15 55/23 63/7 64/17 73/11 75/18 75/21 75/25 76/12 78/14 78/21 78/22 79/7 79/11 84/5 84/8 84/11 84/22 85/20 85/24 86/5 87/7</p>	<p>87/25 88/2 89/15 90/23 91/13 91/18 91/23 92/2 109/16 109/20 113/12 121/8 125/12 125/15 125/20 125/21 125/24 125/25 142/16 found [6] 16/1 59/19 94/1 104/23 129/14 139/7 founder [2] 7/4 7/11 four [6] 47/14 94/24 95/11 95/16 96/4 112/17 fourth [1] 39/21 fraction [2] 28/12 28/14 frame [1] 16/23 Francisco [1] 1/17 Franklin [1] 26/18 free [1] 82/5 freely [1] 63/3 front [5] 17/18 24/1 62/25 73/11 78/2 FRT [133] 20/17 21/2 21/16 21/20 21/24 22/2 22/15 22/19 22/22 22/25 23/5 25/15 25/20 26/15 26/24 27/1 27/4 27/19 29/12 30/6 31/2 31/5 34/23 34/24 35/6 35/18 35/22 37/1 38/2 38/9 40/2 40/22 40/25 41/10 44/13 44/25 45/19 52/18 52/20 52/21 53/3 53/21 56/8 56/12 56/15 57/5 57/7 57/13 58/14 60/8 65/4 65/7 65/18 66/20 67/5 67/6 67/7 70/8 71/17 71/19 74/20 79/20 80/6 81/2 81/18 85/11 85/15 85/21 86/15 86/25 89/3 90/8 90/13 92/14 93/9 93/11 98/13 99/19 100/13 100/16 101/12 102/16 102/24 103/11 109/11</p>	<p>111/14 111/25 112/3 112/10 112/14 112/25 113/10 113/24 115/6 115/24 116/7 116/11 116/15 116/18 123/24 124/8 124/11 125/18 126/20 129/21 130/13 130/23 131/2 131/4 131/15 131/24 132/3 132/10 132/14 133/6 133/12 133/24 134/10 136/25 137/4 140/1 140/6 141/17 141/21 141/22 141/25 142/10 142/15 142/19 142/19 142/24 144/5 144/10 FRT-15 [121] 20/17 21/2 21/16 21/24 22/2 22/15 22/19 22/25 23/5 25/15 25/20 26/15 26/24 27/1 27/4 27/19 29/12 30/6 31/2 31/5 34/23 34/24 35/6 35/18 35/22 37/1 38/2 38/9 40/22 40/25 41/10 44/13 44/25 45/19 52/18 52/20 52/21 53/3 53/21 56/8 56/12 56/15 57/5 57/7 57/13 58/14 60/8 65/4 65/7 65/18 66/20 67/5 67/6 67/7 70/8 71/17 71/19 74/20 79/20 80/6 81/2 81/18 85/11 85/15 85/21 86/15 86/25 89/3 90/8 90/13 92/14 93/9 93/11 98/13 99/19 100/16 101/12 102/16 102/24 103/11 109/11 111/14 111/25 112/3 112/10 112/14 112/25 113/10 113/24 115/6 115/24 116/7 116/11 116/15 116/18 123/24 124/8 124/11 125/18 126/20 129/21</p>
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<p>F</p> <p>Case 4:23-cv-00830-O Document 56 Filed 10/10/23 Page 165 of 195 PageID 1494</p> <p>FRT-15... [20] 131/4</p> <p>131/15 131/24 132/3 132/10</p> <p>132/14 133/6 133/12</p> <p>133/24 134/10 136/25</p> <p>140/1 141/17 141/21 141/22</p> <p>141/25 142/19 142/19</p> <p>142/24 144/10</p> <p>FRT-15's [3] 22/22 40/2</p> <p>142/10</p> <p>FRT-15-equipped [1]</p> <p>137/4</p> <p>FRT-15s [4] 100/13 140/6</p> <p>142/15 144/5</p> <p>FRT-equipped [1] 131/2</p> <p>FRTs [3] 129/11 129/14</p> <p>138/19</p> <p>full [6] 23/22 24/11 39/24</p> <p>40/1 40/3 88/5</p> <p>fully [20] 16/18 18/21 55/7</p> <p>58/19 66/11 66/13 74/12</p> <p>75/22 76/7 78/25 81/10</p> <p>88/5 88/19 89/13 90/23</p> <p>121/7 122/12 125/15 132/15</p> <p>144/1</p> <p>function [112] 11/22 15/1</p> <p>15/3 15/6 15/16 15/17</p> <p>17/12 20/11 20/12 22/22</p> <p>23/4 25/13 27/5 28/20</p> <p>28/20 29/19 29/19 29/22</p> <p>30/9 30/12 30/22 31/6</p> <p>32/14 38/10 38/12 43/8</p> <p>43/20 43/24 44/4 44/6</p> <p>45/7 45/8 48/1 56/17</p> <p>56/22 68/3 68/10 87/18</p> <p>94/6 94/10 94/12 95/23</p> <p>96/5 97/18 97/21 98/1</p> <p>98/3 98/9 102/20 102/25</p> <p>103/1 103/3 103/4 103/7</p> <p>103/8 103/13 103/16</p> <p>103/16 103/18 103/19</p> <p>103/25 105/6 105/11</p>	<p>105/17 105/19 106/1 106/13</p> <p>106/23 107/4 107/6 108/2</p> <p>108/4 108/17 110/11 114/21</p> <p>115/20 120/3 120/6 120/13</p> <p>120/14 120/14 122/20</p> <p>124/5 124/17 127/15</p> <p>127/15 130/2 130/4 130/10</p> <p>130/11 130/21 130/22</p> <p>132/13 133/9 133/11 135/13</p> <p>135/25 136/1 136/2 136/9</p> <p>136/18 140/24 141/4 141/6</p> <p>141/14 141/23 141/24 142/6</p> <p>142/9 142/11 142/13</p> <p>142/24</p> <p>functioning [7] 60/10 71/10</p> <p>71/14 71/17 80/5 123/3</p> <p>123/25</p> <p>functions [19] 18/8 28/21</p> <p>58/25 94/15 94/21 94/24</p> <p>95/11 95/16 96/1 96/4</p> <p>96/8 104/6 104/8 123/16</p> <p>123/18 126/12 129/21</p> <p>132/14 142/4</p> <p>further [11] 19/21 35/16</p> <p>45/21 45/22 115/10 117/1</p> <p>126/23 127/20 135/6</p> <p>146/8 146/12</p> <hr/> <p>G</p> <p>Gaborone [1] 9/23</p> <p>GARLAND [1] 1/8</p> <p>GARY [4] 1/19 5/22 143/14</p> <p>143/16</p> <p>gas [2] 14/21 60/18</p> <p>gave [1] 33/7</p> <p>general [5] 7/9 8/2 16/14</p> <p>47/6 49/19</p> <p>generally [7] 14/7 15/17</p> <p>15/24 16/1 16/5 16/17</p> <p>56/24</p> <p>generated [4] 14/16 36/17</p> <p>78/18 131/18</p> <p>geometry [1] 30/4</p>	<p>get [15] 6/4 10/10 20/16</p> <p>23/9 23/19 34/13 38/18</p> <p>38/22 98/19 104/16 128/17</p> <p>134/20 134/21 134/23</p> <p>145/16</p> <p>gets [1] 88/21</p> <p>getting [3] 39/1 133/16</p> <p>138/16</p> <p>give [15] 10/21 16/8 27/21</p> <p>29/8 39/5 39/7 39/20</p> <p>40/16 53/13 80/1 128/3</p> <p>128/6 128/23 138/18 145/9</p> <p>give you [1] 39/5</p> <p>given [8] 12/8 31/1 118/17</p> <p>119/19 123/6 123/8 139/20</p> <p>140/2</p> <p>giving [1] 90/8</p> <p>glasses [1] 17/5</p> <p>Glock [17] 43/14 94/20</p> <p>94/22 94/24 95/3 95/7</p> <p>95/7 95/8 95/10 95/10</p> <p>95/13 95/17 95/25 95/25</p> <p>96/3 96/7 96/7</p> <p>Glock-type [3] 94/20</p> <p>94/22 94/24</p> <p>gmail.com [2] 3/4 146/21</p> <p>go [21] 6/15 10/17 11/17</p> <p>16/17 18/12 22/18 23/10</p> <p>32/19 33/21 36/3 40/17</p> <p>44/19 47/17 51/1 53/14</p> <p>104/1 104/15 116/22 128/18</p> <p>131/10 131/17</p> <p>go-to [1] 10/17</p> <p>goes [5] 24/14 27/13</p> <p>70/25 103/23 125/22</p> <p>going [48] 10/23 17/24</p> <p>18/1 18/22 19/7 23/13</p> <p>23/15 23/16 24/18 24/20</p> <p>27/9 27/10 29/16 29/21</p> <p>29/22 29/23 30/7 50/15</p> <p>51/24 60/23 63/12 63/13</p> <p>67/12 68/15 68/18 71/21</p>
---	--	---

<p>G going... [22] 72/20 73/18 75/15 75/20 77/18 78/13 78/20 79/20 83/9 83/25 85/19 87/2 91/3 91/17 91/22 98/25 128/2 129/6 131/15 137/21 140/15 145/9 Goldilocks [1] 134/6 gone [1] 50/1 good [18] 5/8 5/12 5/18 5/23 5/25 6/15 6/19 6/22 27/16 31/18 39/6 46/12 46/16 99/4 99/7 99/8 124/23 137/21 got [7] 6/5 30/20 32/9 33/24 100/9 128/3 136/24 government [10] 26/3 46/10 128/18 129/16 129/16 138/6 138/22 139/16 140/12 143/7 government's [1] 140/8 grab [1] 39/3 grabbing [1] 122/16 grabs [1] 122/11 graduated [1] 51/11 grammatical [1] 143/4 grant [1] 139/15 granted [1] 28/6 granting [1] 139/11 graphically [1] 87/1 graphics [1] 68/15 grappling [1] 136/8 great [2] 99/4 145/8 green [7] 18/23 18/23 24/2 62/11 69/19 80/23 83/6 green-colored [1] 80/23 grip [1] 36/23 group [44] 1/16 1/19 53/6 60/14 61/25 63/13 63/16 63/17 63/23 64/4 66/22 69/4 69/12 69/18 72/22</p>	<p>72/25 73/14 73/17 75/15 75/21 76/11 76/23 77/14 77/17 77/22 77/24 78/13 78/21 78/22 79/6 79/7 81/5 81/18 84/1 84/2 84/11 87/24 88/2 89/14 91/2 91/7 91/17 91/23 132/13 groups [2] 8/6 69/2 guess [2] 54/6 112/17 guidance [1] 10/21 guild [1] 7/7 gun [63] 1/5 7/25 8/13 9/7 9/17 11/14 11/24 12/1 14/11 14/18 15/4 15/15 21/8 24/15 27/6 27/25 28/12 30/3 30/4 33/18 34/18 35/25 37/8 37/15 38/25 41/18 41/21 41/24 42/5 42/13 43/5 43/6 43/17 51/18 73/12 99/13 102/19 106/18 106/24 109/1 110/22 111/8 118/13 119/10 119/12 122/6 122/17 122/22 122/23 122/23 123/2 123/7 123/24 131/9 131/10 131/15 141/5 142/12 142/23 144/4 144/23 145/1 145/6 gun's [1] 15/17 guns [14] 13/23 15/20 15/20 33/23 43/14 50/18 51/22 59/5 103/25 133/18 133/21 134/18 140/1 142/14 Guns..... 77 [1] 2/18 gunsmith [10] 49/13 49/15 49/16 49/21 50/5 50/18 51/1 51/4 51/6 51/7 guy [1] 10/17</p> <hr/> <p>H</p> <hr/> <p>H.B [1] 1/22 habit [1] 119/4</p>	<p>had [18] 7/23 7/24 7/24 11/12 21/8 32/1 32/2 32/6 33/2 46/2 49/12 54/2 82/22 114/20 119/19 127/23 128/5 139/9 hairs [2] 126/9 135/15 half [9] 9/1 35/4 35/8 37/1 37/3 37/21 37/25 41/16 42/17 halfway [4] 97/2 134/20 134/25 135/4 hammer [233] hammer's [2] 64/10 74/2 hammer-fire [2] 97/20 98/4 hammer-fired [8] 43/22 59/5 108/21 114/23 114/24 115/4 141/5 141/9 hand [15] 6/20 46/13 61/1 61/5 61/11 61/16 68/20 68/21 68/23 68/24 75/2 79/21 79/23 79/25 80/23 handed [4] 57/18 60/25 76/21 90/11 handlers [1] 12/23 happen [38] 22/3 26/1 37/2 37/6 38/2 62/17 63/12 64/3 64/24 66/9 72/8 72/20 73/18 75/20 77/9 77/22 78/17 78/20 79/5 79/6 83/9 83/25 84/16 88/9 89/10 90/20 91/7 91/22 92/7 100/3 103/3 103/25 116/24 121/2 123/14 126/15 133/11 134/15 happened [1] 99/25 happening [4] 28/21 75/4 83/13 131/8 happens [9] 62/23 73/7 74/3 81/25 82/13 92/2 118/17 137/5 141/1</p>
---	--	---

<p>H happy [1] 139/19 hard [5] 35/19 35/23 35/24 36/5 116/12 harnessing [1] 131/18 has [95] 10/9 11/19 11/19 14/2 14/19 19/16 19/16 22/5 22/10 23/20 23/21 24/4 24/10 25/10 25/12 25/14 27/19 28/24 31/4 32/14 34/12 36/1 36/1 44/23 45/11 45/15 47/22 49/16 50/1 55/24 56/21 59/25 63/7 64/16 65/9 66/13 66/22 67/7 68/2 71/14 71/15 71/24 72/19 73/9 73/11 74/22 75/11 76/7 76/11 76/14 82/21 82/24 83/6 83/8 83/11 83/23 83/24 86/6 88/2 88/4 90/1 90/25 91/4 93/1 93/2 95/10 98/4 100/11 101/21 102/16 103/22 103/24 104/1 107/6 109/19 111/18 117/22 118/10 119/5 119/7 119/18 120/19 120/19 121/6 121/16 124/3 125/5 126/6 130/4 132/6 133/2 133/13 139/25 140/12 141/1 hasn't [2] 101/20 119/22 have [113] 5/21 6/22 13/13 13/14 13/15 13/20 16/8 17/3 17/7 18/4 23/2 25/20 33/17 33/21 34/4 34/7 35/23 36/10 36/22 36/22 36/22 38/17 39/4 39/9 42/9 42/13 43/3 43/4 43/13 43/14 43/23 44/4 44/6 46/16 47/1 47/14 48/10 48/13 48/15 48/19 49/6 49/8 49/8 50/13 50/14 50/23 53/11</p>	<p>53/15 54/5 57/12 57/14 59/7 60/8 60/10 62/19 64/24 65/1 66/20 66/24 67/1 68/7 70/5 70/8 71/17 71/19 72/5 76/13 76/18 81/12 83/2 88/9 88/12 88/13 90/12 90/17 92/25 93/2 93/5 93/7 93/8 93/10 95/14 97/8 98/7 98/18 99/2 104/13 106/7 112/23 114/18 121/17 122/6 122/9 122/17 125/3 126/3 127/8 127/10 127/25 128/7 131/15 135/7 138/3 138/25 139/7 140/4 140/5 144/10 144/12 144/15 145/3 145/4 145/18 haven't [1] 39/10 having [7] 10/13 10/15 25/1 67/11 82/10 82/11 140/6 he [12] 24/23 26/10 40/12 114/23 118/11 118/19 118/22 119/3 122/9 126/12 133/2 144/20 he's [5] 32/15 118/22 118/23 126/12 126/13 head [1] 9/1 hear [10] 31/17 40/20 84/20 91/13 97/19 98/12 105/1 124/1 124/24 146/7 heard [13] 120/2 126/19 129/25 130/3 130/18 131/4 131/6 131/16 131/24 134/5 134/17 140/20 141/21 hearing [2] 1/11 117/24 heart [1] 94/4 held [12] 19/1 19/3 53/6 78/1 109/16 109/20 112/20 130/5 134/3 140/23 141/5 143/2 help [1] 47/11 helpful [1] 60/24</p>	<p>here [47] 5/5 5/7 5/24 17/17 17/25 18/14 18/16 19/2 19/4 19/11 19/12 23/25 24/17 25/22 27/8 27/18 28/15 53/11 61/3 62/13 69/13 71/10 76/18 77/11 78/3 78/5 83/2 87/3 87/4 88/4 90/2 90/12 90/25 91/11 91/16 121/1 125/3 129/18 131/23 137/25 138/11 139/6 139/11 139/24 140/7 143/22 144/12 Here's [1] 53/14 hey [2] 34/14 145/7 high [3] 35/19 41/21 41/22 highly [2] 129/14 135/20 him [3] 6/18 124/1 144/6 hinge [1] 19/8 his [16] 19/8 21/7 40/8 40/9 41/8 41/11 41/14 42/18 42/25 102/5 117/18 124/7 130/8 131/13 144/6 144/7 history [2] 10/9 48/1 hit [2] 82/15 125/16 hits [2] 77/17 111/3 hitting [1] 132/7 hold [11] 8/20 13/1 38/8 44/12 44/16 55/9 61/3 109/7 113/1 113/11 114/12 holding [15] 17/20 19/17 55/5 71/25 84/18 85/12 90/2 91/15 116/20 125/14 127/14 130/20 133/10 137/8 139/10 Homeland [1] 8/8 Honor [47] 5/8 5/12 5/15 5/19 5/25 6/2 6/6 6/12 6/13 6/17 14/4 27/17 28/22 31/9 31/15 31/18 32/13 32/17 39/3 39/4</p>
---	--	---

<p>H</p> <p>Honor... [27] 39/20 44/8 45/23 46/6 46/8 46/10 61/15 99/1 118/2 119/21 127/25 128/15 128/20 128/21 129/5 132/17 133/2 133/13 133/20 136/5 136/10 137/17 137/23 138/4 139/24 143/14 143/16</p> <p>HONORABLE [1] 1/12</p> <p>honors [1] 51/11</p> <p>hook [3] 18/22 18/23 125/6</p> <p>hoped [1] 128/5</p> <p>host [3] 53/1 53/3 56/22</p> <p>hours [1] 129/1</p> <p>housed [1] 60/17</p> <p>houses [1] 47/19</p> <p>Houston [1] 1/23</p> <p>how [67] 10/2 11/2 11/17 12/15 20/20 21/6 21/16 29/16 29/19 30/21 31/5 34/9 34/23 35/9 36/10 37/10 37/18 38/16 40/23 44/13 44/17 47/1 48/7 48/10 49/2 50/5 50/6 50/18 51/20 53/22 56/18 56/20 56/20 57/1 67/4 69/3 74/6 89/3 95/5 96/19 96/25 100/24 100/25 103/6 103/15 103/15 104/7 105/18 106/1 107/2 107/9 108/11 115/14 116/6 116/17 116/19 119/3 124/2 128/22 128/24 129/21 130/21 132/14 133/18 133/22 136/8 141/17</p> <p>however [4] 30/5 44/18 116/25 134/11</p> <p>huh [1] 136/13</p>	<p>human [2] 104/2 143/11</p> <p>Hundred [3] 8/5 33/3 33/8</p> <p>hundred-plus [1] 33/8</p> <p>hundreds [2] 7/24 16/6</p> <p>Hungary [1] 9/22</p> <p>hurt [1] 88/22</p> <p>hypothetical [1] 100/2</p> <p>hypothetically [1] 42/16</p> <hr/> <p>I</p> <hr/> <p>I'm [44] 7/4 10/7 13/3 14/22 17/6 17/16 27/10 30/17 32/17 33/5 34/6 37/9 38/4 40/5 42/20 42/20 46/1 46/24 47/14 51/24 60/5 61/9 61/19 68/18 95/20 96/18 97/5 99/24 100/2 106/21 108/3 117/23 127/9 128/2 128/3 129/6 135/14 136/20 136/21 136/21 138/16 139/19 145/17 145/18</p> <p>I've [5] 13/3 18/13 28/16 48/18 128/3</p> <p>idea [2] 30/20 36/10</p> <p>ideas [1] 122/19</p> <p>identify [4] 9/7 10/2 12/15 17/8</p> <p>identifying [1] 9/17</p> <p>if [108] 10/11 12/2 12/2 17/15 20/22 24/21 24/23 26/10 26/11 27/20 33/7 33/8 34/13 35/18 35/19 35/22 35/23 36/5 37/2 37/11 37/12 37/14 37/15 37/23 38/13 38/20 38/24 39/3 39/5 39/21 41/7 41/11 41/15 41/23 42/4 42/15 42/25 44/12 44/16 44/24 46/1 46/16 50/12 50/15 56/3 56/7 61/8 62/15 63/4 63/21 64/8 65/14 65/17 68/16 72/13</p>	<p>72/24 78/11 82/7 83/12 84/12 84/16 85/18 88/10 93/11 93/14 93/17 94/12 95/23 96/5 97/8 99/19 100/4 100/25 101/3 102/19 104/15 105/24 108/19 110/14 112/9 112/13 112/19 113/6 113/10 113/17 113/19 114/5 114/11 116/15 116/19 116/23 119/16 121/18 121/22 124/14 124/22 124/24 125/14 126/2 127/12 133/2 135/6 135/14 138/4 138/22 139/14 139/17 145/8</p> <p>ignite [1] 88/15</p> <p>ignites [3] 82/16 82/16 88/18</p> <p>illegal [2] 140/3 145/8</p> <p>illustrate [2] 124/12 132/14</p> <p>image [42] 61/1 61/2 61/23 62/1 62/3 62/9 62/12 62/24 63/5 64/9 69/10 69/11 69/22 70/11 71/21 72/14 73/2 73/8 73/21 75/4 79/24 80/2 80/3 80/5 80/8 80/10 80/17 80/24 81/18 82/2 82/9 82/21 83/7 83/13 86/25 87/2 87/9 87/12 87/23 88/3 89/7 89/11</p> <p>images [17] 60/23 61/10 61/11 61/12 61/20 61/21 65/21 66/2 66/10 67/12 67/13 68/16 68/23 68/24 70/21 79/20 79/23</p> <p>immediate [1] 89/10</p> <p>immediately [1] 81/25</p> <p>Immigration [1] 8/9</p> <p>impacts [1] 108/25</p> <p>implicated [1] 131/22</p>
---	---	--

<p>I</p> <p>importance [1] 117/17</p> <p>important [3] 110/4 131/10 138/7</p> <p>importers [1] 7/25</p> <p>impossible [5] 24/6 27/3 38/11 38/11 39/2</p> <p>in [390]</p> <p>inaccurate [1] 85/2</p> <p>inadequate [1] 144/18</p> <p>inanimate [2] 132/21 133/3</p> <p>INC [1] 1/5</p> <p>inch [5] 28/12 28/14 28/15 28/17 36/18</p> <p>inclined [2] 138/5 139/15</p> <p>include [6] 12/15 13/8 57/4 117/20 143/25 143/25</p> <p>included [1] 34/1</p> <p>includes [1] 15/9</p> <p>including [4] 89/5 140/13 142/14 144/5</p> <p>incorporate [1] 54/11</p> <p>Incorporated [1] 8/12</p> <p>incorporates [1] 60/17</p> <p>indeed [2] 44/24 112/3</p> <p>indefinitely [5] 55/9 60/2 74/8 80/22 109/7</p> <p>independently [1] 64/23</p> <p>Index.....</p> <p>.....147 [1]</p> <p>4/17</p> <p>Indiana [1] 13/4</p> <p>indicating [1] 17/17</p> <p>indirectly [1] 115/24</p> <p>individual [12] 50/11 99/12 116/15 138/6 138/9 138/13 138/23 143/20 144/3 144/4 144/19 145/5</p> <p>individual-named [1] 144/19</p> <p>individuals [2] 143/24 144/10</p>	<p>industry [5] 7/9 12/21 47/6 47/17 49/13</p> <p>inertia [1] 14/22</p> <p>inevitably [1] 54/12</p> <p>initial [2] 28/7 92/25</p> <p>initially [3] 43/3 86/22 111/20</p> <p>initiate [20] 29/24 55/11 56/1 65/3 67/3 91/1 92/21 94/11 97/9 98/9 103/2 103/10 104/1 108/14 108/19 112/24 123/19 130/6 130/14 136/19</p> <p>initiated [10] 53/25 55/4 68/2 71/24 82/23 86/18 103/11 108/9 116/6 116/8</p> <p>initiates [8] 55/6 59/2 94/18 95/2 97/16 113/3 136/17 137/4</p> <p>initiating [10] 68/10 94/13 95/24 96/6 107/21 108/7 108/12 114/25 119/14 136/5</p> <p>initiation [5] 81/21 90/15 107/5 120/4 130/12</p> <p>injunction [12] 129/9 129/15 138/1 138/5 138/5 138/16 138/17 138/23 139/11 139/15 144/14 145/13</p> <p>injunctions [1] 139/1</p> <p>injure [1] 118/12</p> <p>injures [1] 120/22</p> <p>input [5] 68/5 85/12 87/21 101/14 143/11</p> <p>inquiry [1] 32/14</p> <p>insist [1] 34/17</p> <p>inspect [1] 56/19</p> <p>install [3] 53/3 53/7 56/22</p> <p>installed [3] 21/9 52/25 95/14</p> <p>instance [1] 118/4</p>	<p>instances [1] 145/4</p> <p>instant [2] 75/8 89/10</p> <p>instantaneously [1] 24/16</p> <p>instead [1] 142/20</p> <p>instructed [1] 99/17</p> <p>instructor [6] 9/1 9/4 9/5 9/12 13/3 13/4</p> <p>instructors [1] 9/13</p> <p>insufficient [1] 134/8</p> <p>intend [1] 6/18</p> <p>intended [2] 58/14 88/25</p> <p>intentionally [2] 117/23 126/13</p> <p>interact [9] 56/18 56/20 59/11 73/12 79/10 89/14 103/22 106/2 132/12</p> <p>interacted [1] 73/19</p> <p>interacting [5] 87/11 87/13 89/8 89/9 125/8</p> <p>interaction [1] 123/21</p> <p>interacts [4] 71/4 73/22 105/18 107/3</p> <p>interchangeable [1] 16/11</p> <p>interest [1] 10/9</p> <p>interlocked [1] 121/15</p> <p>intermediary [1] 116/3</p> <p>internal [7] 17/2 54/1 61/6 87/19 90/5 92/18 109/13</p> <p>internally [1] 68/16</p> <p>International [3] 7/1 7/5 9/22</p> <p>interrupt [6] 35/24 37/12 37/18 38/25 41/18 41/23</p> <p>interrupted [1] 42/10</p> <p>interstate [3] 33/16 34/4 34/8</p> <p>interview [2] 49/6 49/10</p> <p>intimate [1] 49/16</p> <p>into [34] 10/10 12/5 14/16 17/18 18/19 20/16 21/19 21/21 22/1 23/22 24/5 24/14 27/15 29/1 30/13</p>
--	--	---

<p>I into... [19] 31/14 38/19 43/17 52/5 52/10 56/22 58/1 66/12 66/13 71/1 71/5 77/2 78/24 88/21 114/7 114/15 114/17 118/12 120/9 introduce [2] 57/23 76/24 invented [3] 13/13 16/2 58/7 investigations [1] 8/23 investigators [1] 12/22 involve [2] 9/7 9/17 involved [2] 33/20 144/23 irrelevant [1] 127/5 is [622] ish [1] 62/8 isn't [5] 28/6 67/24 99/9 102/19 124/18 issue [16] 33/4 33/11 34/2 34/10 117/22 118/14 118/15 118/19 126/9 129/9 138/5 138/5 138/23 139/15 143/22 144/12 issues [3] 31/17 33/5 143/18 it [509] it's [129] 6/13 7/7 11/4 11/5 12/2 12/2 12/21 12/24 15/14 15/20 15/20 16/1 16/1 16/4 16/6 16/14 18/18 19/3 19/17 21/20 21/23 22/12 24/3 24/8 24/20 25/21 26/23 27/3 27/23 28/1 28/18 30/6 30/18 30/25 34/12 35/13 36/13 37/15 38/10 38/16 39/22 43/4 43/5 43/5 43/14 44/2 45/6 45/13 45/13 50/4 54/10 54/12 54/24 55/21 56/21 57/19 58/12 60/16 63/6 65/10 65/12 70/22 71/5 71/10 71/10</p>	<p>75/11 76/19 77/5 80/2 83/2 85/4 85/5 85/13 86/8 86/21 88/7 90/16 91/14 91/15 92/16 92/16 94/3 94/5 102/17 103/20 103/21 104/6 107/12 107/21 108/19 109/20 110/10 110/17 110/18 110/18 113/15 114/1 114/4 114/14 114/16 114/17 115/18 118/17 120/13 121/3 121/8 121/17 122/2 122/16 123/13 125/13 126/7 126/9 127/11 130/8 130/8 130/9 131/8 131/24 132/9 132/17 132/22 132/23 134/3 134/6 134/25 135/3 136/5 144/24 item [1] 12/7 its [45] 11/24 14/14 14/18 15/21 19/17 23/25 41/2 44/12 45/14 63/14 63/17 65/7 66/11 68/3 69/12 72/22 73/22 75/6 76/2 76/7 76/12 78/13 82/5 83/10 84/1 86/5 88/2 89/12 91/16 91/18 102/12 109/16 112/10 113/11 113/20 116/9 121/7 123/8 125/11 125/12 130/25 134/3 140/8 140/13 140/25 itself [10] 52/25 60/18 65/13 71/4 83/5 84/5 86/8 118/6 141/20 143/5</p> <p>J</p> <p>jam [9] 36/9 37/9 41/18 41/21 42/5 45/1 123/7 134/4 145/19 jammed [1] 43/4 jamming [2] 116/12 116/15 jams [1] 36/6 jigs [1] 50/8</p>	<p>job [7] 15/21 52/16 86/5 86/9 92/16 103/9 103/21 Jokel [2] 130/8 141/12 judge [2] 1/12 135/17 judges [1] 135/16 Judicial [1] 146/13 jumps [1] 24/5 jurisdiction [1] 33/20 jurisdictions [2] 139/9 139/13 jury [1] 128/4 just [160] JUSTICE [1] 2/5</p> <p>K</p> <p>Kalen [1] 27/7 keep [7] 29/16 76/16 98/25 113/1 117/23 134/21 137/23 keeping [1] 126/5 key [2] 60/19 107/12 kind [4] 81/14 103/5 107/10 119/23 KING [1] 1/22 knocking [1] 139/25 know [28] 9/24 10/11 11/20 28/15 30/18 32/8 34/9 34/23 37/8 37/10 37/12 37/17 44/21 49/2 54/2 54/21 94/4 100/2 103/25 104/16 114/13 114/19 118/19 118/22 121/21 124/2 140/7 143/20 knowledge [5] 7/8 14/5 49/8 49/17 67/18 knowledgeable [2] 10/6 10/8 known [2] 16/15 95/7</p> <p>L</p> <p>land [1] 139/12 language [2] 100/21 137/18 largest [1] 8/13</p>
---	---	--

L	lessening [2] 40/9 107/8	line [1] 32/13
last [7] 9/9 9/11 41/9	lessens [1] 40/12	lines [1] 27/20
42/21 88/18 101/21 128/8	lesson [4] 12/11 12/14	litigated [1] 139/4
Lastly [1] 62/10	12/15 12/19	little [5] 24/9 35/11 35/13
late [1] 58/9	let [11] 17/4 27/9 27/11	36/16 114/10
lately [1] 39/11	44/13 44/17 44/19 61/3	live [3] 7/19 19/20 56/23
later [2] 24/7 33/24	85/17 104/16 108/1 136/16	LLP [1] 1/22
LAURA [3] 2/5 5/14 129/7	let's [18] 6/4 6/15 18/7	load [7] 23/23 24/16 71/3
law [14] 1/16 1/19 7/8	22/18 23/9 28/17 30/6	71/6 112/9 112/19 113/6
9/22 13/4 13/5 16/9 16/20	30/15 36/24 37/4 37/20	loaded [3] 14/15 43/15
20/24 47/9 47/12 48/8	37/21 42/16 58/25 79/21	112/13
129/23 139/12	97/2 106/22 111/17	loading [8] 14/13 14/24
LAWKOWSKI [4] 1/19	lets [1] 116/22	14/25 15/5 15/13 15/15
5/22 143/14 143/17	letters [1] 140/2	36/1 118/3
lawyer [1] 101/13	level [4] 7/24 19/9 120/20	loads [2] 14/18 88/19
lawyers [1] 101/4	134/6	local [1] 47/12
learn [2] 10/2 11/4	library [1] 47/21	located [2] 70/13 144/19
learned [2] 10/13 11/12	licensed [2] 7/25 8/13	location [1] 21/7
least [1] 17/17	lifelong [1] 10/9	lock [2] 66/12 66/23
Leave [1] 22/19	light [2] 35/11 35/13	lock-up [1] 66/23
Lee [1] 139/7	lightweight [2] 85/4 85/9	locked [9] 24/8 66/13
left [24] 29/10 29/21	like [35] 6/7 16/13 20/16	74/12 76/8 78/24 81/10
30/21 61/1 61/11 61/23	23/14 23/16 26/3 31/17	88/5 88/16 89/13
63/5 65/21 65/23 65/24	34/14 34/22 37/10 39/5	locking [30] 24/3 24/5
66/7 68/23 68/24 69/10	43/7 43/14 50/16 51/14	24/10 24/18 24/22 25/1
69/11 69/25 70/25 72/14	53/13 60/20 68/13 76/17	25/24 25/25 76/2 80/25
73/21 80/23 87/9 117/16	79/18 90/7 101/12 108/21	81/1 83/6 83/23 87/11
118/10 120/19	113/23 117/3 117/9 118/17	88/19 89/8 89/15 89/16
left-hand [5] 61/1 61/11	119/20 124/19 130/24	90/22 91/14 91/24 109/16
68/23 68/24 80/23	135/15 141/5 141/18 142/1	109/20 110/7 111/1 119/2
leftmost [1] 75/7	142/23	121/14 122/14 126/6 132/9
leg [2] 70/24 70/24	likelihood [2] 129/10	locks [1] 24/14
legal [4] 7/8 31/16 67/19	129/17	lockup [1] 76/12
67/22	likely [3] 129/14 129/22	logical [1] 114/17
legality [1] 138/19	139/8	long [10] 18/18 28/5 40/12
legally [1] 130/8	likewise [1] 134/22	45/6 47/1 85/25 119/22
length [1] 16/13	limit [1] 143/20	128/3 131/10 131/11
less [4] 28/18 37/4 37/25	limited [10] 6/9 15/14	look [11] 11/24 17/15
53/7	132/2 138/7 138/8 138/20	20/22 34/18 53/13 56/17
lessen [8] 40/8 41/7 41/11	138/24 144/24 145/2	65/21 73/20 90/9 98/8
41/14 42/18 42/25 106/19	145/13	117/10
106/24	limiting [1] 144/16	looked [2] 21/9 82/22

<p>L</p> <p>looking [11] 17/6 20/1 27/8 61/1 66/3 68/23 74/2 79/23 80/15 86/25 112/13</p> <p>lot [6] 33/5 33/25 36/19 36/20 50/14 103/4</p> <p>loud [3] 27/16 39/25 124/23</p> <p>Louisiana [2] 139/2 144/20</p> <p>lower [6] 62/2 69/14 70/25 73/10 89/16 125/10</p>	<p>58/7 58/17 58/23 67/17 68/15 69/4 69/7 69/8</p> <p>70/17 72/3 74/10 76/23 79/13 92/14 93/6 93/23 93/25 94/3 94/9 95/6 95/14 95/18 95/19 95/21 96/17 98/13 99/11 99/20 99/21 100/16 102/12 102/12 102/17 102/21 102/24 104/4 104/23 105/2 105/22 107/24 111/18 112/20 113/7 113/24 114/3 114/7 114/15 114/17 116/3 119/16 119/17 121/23 122/6 122/7 122/18 123/19 124/18 126/21 126/22 127/6 136/25 140/3 142/3 142/12 143/3 143/8</p> <p>machinegun require [1] 122/6</p> <p>machinegun's [1] 142/7</p> <p>machineguns [23] 13/24 14/6 15/2 34/17 48/17 48/20 50/22 51/15 54/17 59/19 81/16 96/12 96/14 100/13 101/24 102/2 102/6 117/6 117/19 129/11 129/14 134/19 139/8</p> <p>made [6] 16/10 33/18 33/23 58/8 118/19 133/10</p> <p>magazine [6] 30/5 30/7 44/18 76/1 116/25 121/9</p> <p>main [1] 103/23</p> <p>maintain [17] 38/8 40/10 40/13 41/15 67/8 67/10 74/17 74/23 76/15 78/11 85/6 86/17 86/22 90/2 92/9 93/3 100/22</p> <p>maintained [5] 56/3 56/7 65/17 93/17 127/16</p> <p>maintaining [14] 47/18 47/21 78/8 79/2 84/12</p>	<p>85/25 87/8 89/24 91/16 91/21 92/6 92/23 130/20 132/23</p> <p>maintains [4] 37/5 37/23 38/1 38/13</p> <p>maintenance [1] 50/4</p> <p>major [1] 71/12</p> <p>majority [1] 135/12</p> <p>make [16] 11/18 22/5 25/7 36/5 36/7 36/9 38/9 43/6 45/2 114/6 123/14 126/3 127/3 134/1 134/1 142/24</p> <p>makes [2] 24/6 38/3</p> <p>making [3] 26/6 132/22 145/6</p> <p>malfunction [11] 36/8 36/9 37/15 37/23 79/17 84/17 88/13 113/13 113/17 116/21 137/20</p> <p>malfunctions [3] 88/24 131/1 132/25</p> <p>man [1] 16/2</p> <p>manager [1] 101/13</p> <p>managers [1] 99/20</p> <p>manner [4] 67/10 90/6 113/15 114/13</p> <p>manual [6] 55/5 55/10 65/12 94/6 109/9 130/2</p> <p>manually [4] 11/21 60/2 88/13 109/5</p> <p>manufacture [1] 50/6</p> <p>manufacturer [3] 11/1 21/1 50/2</p> <p>manufacturers [3] 8/1 138/17 143/25</p> <p>many [21] 29/17 30/21 31/5 33/13 34/9 37/10 37/18 38/3 44/14 44/17 44/18 48/10 50/18 51/20 101/23 115/14 116/6 116/17 116/25 123/16 140/4</p> <p>marked [3] 16/22 39/22</p>
<p>M</p> <p>M15 [1] 16/8</p> <p>M16 [59] 13/11 16/17 16/20 29/11 29/21 30/20 44/16 58/7 58/16 58/17 58/19 58/22 60/10 60/12 60/14 68/14 69/1 69/3 69/7 69/11 70/17 71/13 71/15 72/2 74/10 74/16 76/15 76/22 79/13 86/19 93/6 93/11 111/17 111/17 112/6 112/19 112/25 113/2 113/6 113/19 115/8 115/15 115/21 119/16 122/20 123/1 123/4 124/11 124/20 125/2 125/5 130/24 131/3 131/24 132/4 132/11 132/15 134/14 134/16</p> <p>M16-type [4] 69/3 69/7 70/17 72/2</p> <p>M4 [2] 16/5 16/18</p> <p>machine [2] 59/10 59/12</p> <p>machinegun [96] 9/7 9/18 9/24 9/25 10/3 10/14 10/22 11/13 11/15 12/7 12/16 15/7 15/12 15/13 16/15 16/20 21/13 25/21 27/4 29/11 30/21 32/25 34/3 34/11 44/21 45/3 45/6 53/21 54/20 57/8</p>		

<p>M</p> <p>marked... [1] 66/4</p> <p>market [4] 16/7 26/13 49/18 144/14</p> <p>Marshals [2] 8/7 8/8</p> <p>masks [1] 146/9</p> <p>material [1] 142/18</p> <p>matter [6] 9/8 12/1 38/16 49/7 116/2 146/7</p> <p>matters [1] 116/5</p> <p>may [13] 17/7 39/3 46/7 60/24 100/6 117/2 117/5 117/6 122/9 127/12 127/25 129/6 135/15</p> <p>maybe [4] 18/11 28/18 50/2 114/18</p> <p>me [28] 5/21 10/11 10/12 10/20 13/15 14/10 17/4 23/8 32/2 35/15 38/4 38/6 39/5 39/20 40/16 47/14 61/3 67/21 80/1 85/17 104/16 106/7 106/17 108/1 117/7 119/4 128/25 136/16</p> <p>mean [14] 9/10 16/20 19/22 20/14 36/16 41/14 42/4 45/13 45/14 52/23 81/3 114/16 118/15 133/8</p> <p>meaning [2] 29/15 110/22</p> <p>meaningful [1] 101/20</p> <p>means [12] 33/12 33/17 102/25 105/11 105/17 106/3 112/9 128/11 131/17 132/4 136/2 136/9</p> <p>meant [1] 135/13</p> <p>measure [1] 34/16</p> <p>measured [1] 28/17</p> <p>mechanical [16] 22/10 47/25 52/12 54/9 78/18 87/18 103/9 103/16 103/18 108/11 115/20 116/9 116/21 131/18 140/25 141/7</p>	<p>mechanically [4] 38/11 41/2 85/11 134/9</p> <p>mechanics [1] 92/18</p> <p>mechanism [40] 41/1 54/1 54/12 54/16 56/2 57/4 57/10 59/2 59/18 60/3 62/13 65/13 70/6 70/8 71/15 71/19 81/2 81/12 81/14 87/19 89/5 89/7 90/5 94/18 95/1 97/14 108/8 109/6 109/9 109/13 113/23 115/22 115/24 116/4 117/18 123/23 130/5 131/22 132/9 136/17</p> <p>mechanisms [2] 55/19 117/21</p> <p>member [1] 8/25</p> <p>members [4] 8/1 138/12 144/1 145/5</p> <p>mentioned [4] 10/23 11/12 48/4 122/9</p> <p>mentoring [1] 47/15</p> <p>mere [1] 129/20</p> <p>merely [1] 52/24</p> <p>merits [3] 129/7 129/11 129/17</p> <p>MERRICK [1] 1/8</p> <p>MICHAEL [4] 1/15 2/4 5/8 130/18</p> <p>microphone [2] 27/16 40/19</p> <p>middle [5] 62/2 62/11 69/14 75/10 134/7</p> <p>might [1] 114/13</p> <p>Mike [1] 5/16</p> <p>military [5] 16/3 16/4 16/18 50/3 141/2</p> <p>military's [2] 58/7 58/17</p> <p>mind [1] 137/14</p> <p>minimal [1] 86/2</p> <p>minimum [1] 135/20</p> <p>miniscule [1] 28/9</p>	<p>minute [2] 40/16 98/19</p> <p>minutes [7] 53/8 53/9 99/3 124/11 128/3 128/6 129/2</p> <p>mislead [1] 118/23</p> <p>misleading [2] 117/23 119/4</p> <p>mode [8] 25/4 60/10 62/19 70/18 71/2 71/8 71/13 96/25</p> <p>models [3] 11/2 11/6 124/11</p> <p>modern [1] 94/19</p> <p>modifications [1] 52/25</p> <p>modifies [1] 131/5</p> <p>modulate [3] 86/11 86/15 86/19</p> <p>modules [1] 7/17</p> <p>moment [11] 20/1 22/20 76/10 81/6 83/15 88/4 110/4 110/23 110/25 111/17 127/25</p> <p>Monday [1] 31/25</p> <p>months [1] 127/11</p> <p>more [34] 11/21 15/2 15/15 28/18 33/20 35/13 36/13 37/25 39/1 41/4 41/25 42/1 42/3 43/23 44/4 44/6 44/25 45/1 56/6 94/5 94/12 94/19 96/8 96/12 96/20 118/1 127/15 128/13 128/14 130/1 133/9 143/13 145/18 145/18</p> <p>morning [6] 5/8 5/12 5/25 31/25 99/7 99/8</p> <p>most [13] 10/5 16/11 16/19 76/12 78/13 85/9 91/18 95/6 96/14 112/10 113/11 129/19 134/3</p> <p>mostly [1] 8/23</p> <p>motion [7] 66/8 66/10 88/3 125/11 125/12 129/15 140/16</p>
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<p>M</p> <p>motions [1] 105/12</p> <p>movant [1] 128/17</p> <p>move [61] 14/4 17/22 19/12 22/3 23/18 24/11 24/20 25/7 25/8 25/11 28/3 28/7 28/23 29/23 31/9 34/22 38/21 42/24 43/7 44/17 45/16 45/18 52/5 57/23 62/21 64/17 71/1 75/18 76/24 77/13 77/23 78/22 82/25 83/3 84/8 86/6 89/18 91/3 92/10 96/20 97/11 107/17 107/21 109/23 109/25 110/1 110/13 110/19 111/5 111/8 111/14 112/10 113/2 113/10 113/12 113/15 134/11 134/19 141/23 142/16 142/24</p> <p>moved [10] 25/1 63/7 70/22 82/21 83/1 83/7 83/23 126/6 141/1 141/11</p> <p>movement [10] 20/6 28/5 28/15 28/19 112/1 125/21 143/5 143/5 143/6 143/9</p> <p>moves [24] 18/3 18/9 24/20 28/1 28/11 28/14 30/1 30/2 30/2 73/17 75/21 78/3 78/5 78/21 79/7 91/23 92/2 96/12 111/10 111/20 120/11 137/8 137/15 142/5</p> <p>moving [22] 18/18 19/19 24/9 24/13 24/25 27/23 30/11 30/13 41/4 45/17 72/25 73/15 75/15 77/18 78/14 84/11 87/24 91/18 111/22 121/4 121/7 126/12</p> <p>MR [16] 1/15 1/18 1/19 1/22 2/4 2/4 4/6 4/7 4/8 4/9 4/10 4/13 4/14 4/15</p>	<p>39/21 117/16</p> <p>Mr. [51] 5/10 5/22 6/18 6/25 14/5 14/10 16/22 22/21 27/8 28/24 29/5 31/21 39/9 44/12 45/24 46/11 46/21 51/18 51/25 52/6 52/11 52/16 57/12 61/19 76/18 76/20 84/20 97/19 98/6 98/12 99/7 114/21 117/3 117/9 117/16 117/17 120/2 126/18 126/19 130/7 131/4 131/7 131/12 131/16 131/24 132/3 132/10 134/18 135/9 140/21 141/18</p> <p>Mr. Anthony [3] 45/24 46/11 52/6</p> <p>Mr. Ben [1] 5/22</p> <p>Mr. Ciravolo [23] 46/21 51/18 51/25 52/11 52/16 57/12 61/19 76/18 76/20 99/7 117/17 126/19 130/7 131/4 131/12 131/16 131/24 132/3 132/10 134/18 135/9 140/21 141/18</p> <p>Mr. Columbo [1] 5/10</p> <p>Mr. Dan [1] 6/18</p> <p>Mr. O'Kelley's [1] 114/21</p> <p>Mr. O'Kelly [20] 6/25 14/5 14/10 16/22 22/21 27/8 28/24 29/5 31/21 39/9 44/12 84/20 98/6 98/12 117/3 117/9 117/16 120/2 126/18 131/7</p> <p>Mr. O'Kelly's [1] 97/19</p> <p>MS [1] 2/5</p> <p>much [14] 34/23 35/9 36/10 38/16 38/24 84/16 96/25 104/7 116/19 116/20 128/5 128/22 128/24 134/24</p> <p>multiple [13] 38/9 38/14 94/15 96/1 96/8 111/22</p>	<p>135/3 137/16 139/4 139/9 142/4 142/6 142/7</p> <p>must [23] 33/15 45/16 62/17 67/5 72/2 77/6 77/7 81/22 86/11 111/8 111/9 111/14 112/10 112/14 127/16 134/11 141/23 141/23 142/1 142/11 142/15 142/16 142/24</p> <p>my [17] 5/21 9/9 9/10 9/11 10/9 17/4 52/1 67/18 91/13 100/1 105/4 128/12 129/7 133/17 143/14 146/7 146/11</p> <p>myself [3] 12/13 21/10 99/14</p> <hr/> <p>N</p> <p>name [5] 16/14 16/15 32/6 48/2 48/18</p> <p>named [2] 16/3 144/19</p> <p>names [2] 16/8 16/18</p> <p>narrate [2] 27/13 27/15</p> <p>national [8] 1/5 8/24 12/25 47/18 94/1 144/25 145/1 145/5</p> <p>nationwide [2] 139/1 139/11</p> <p>nature [2] 16/12 49/20</p> <p>near [1] 75/6</p> <p>necessary [3] 22/12 74/17 86/2</p> <p>necessity [1] 22/10</p> <p>need [21] 22/8 25/13 41/13 53/5 59/22 60/3 67/9 67/10 86/15 86/17 86/19 86/21 98/17 98/25 101/1 124/14 124/23 124/24 128/24 134/14 137/1</p> <p>needed [2] 50/9 52/25</p> <p>needs [10] 12/20 22/3 25/17 103/11 104/7 105/7 116/6 116/8 130/14 133/11</p> <p>never [6] 28/16 30/1 30/2</p>
--	---	---

<p>N never... [3] 30/2 42/5 53/8 new [10] 19/20 39/18 55/6 57/16 57/21 68/10 78/23 101/2 107/22 125/13 new-chambered [1] 125/13 next [27] 32/2 36/2 36/24 40/17 63/4 63/12 63/13 63/22 64/3 72/13 72/20 72/24 74/24 82/7 83/9 83/12 83/25 86/24 87/22 89/10 120/20 120/23 120/25 121/4 121/11 121/14 142/17 nexus [10] 33/4 33/5 33/9 33/11 33/25 34/1 34/1 34/2 34/4 34/8 niche [2] 48/2 49/18 no [92] 1/6 5/6 12/1 14/3 14/18 16/9 16/19 22/17 25/22 32/4 32/23 33/1 34/4 34/12 36/12 38/3 38/16 38/16 39/1 40/3 40/3 41/18 43/12 45/4 45/21 46/3 46/4 46/6 48/23 50/12 52/25 53/4 54/24 55/21 56/2 56/5 59/21 59/23 60/3 60/9 60/12 62/14 64/18 64/20 65/16 66/15 66/21 68/4 69/9 71/18 74/17 74/22 75/11 80/18 81/13 83/8 83/24 84/21 84/25 85/23 86/17 86/21 88/4 88/7 90/1 93/16 93/19 93/22 95/20 96/18 98/14 101/1 102/16 103/1 105/3 114/1 114/4 115/10 115/10 116/5 117/1 117/22 120/22 122/19 122/19 126/23 127/20 128/13 128/14 131/2 132/3</p>	<p>134/18 No. [2] 52/6 61/7 No. 1 [1] 52/6 No. is [1] 61/7 non [1] 9/25 non-machinegun [1] 9/25 None [2] 58/24 67/18 nonetheless [1] 87/17 nonsensical [1] 38/6 normally [3] 36/14 65/11 121/23 northern [8] 1/2 9/14 138/24 144/17 144/25 145/2 145/14 146/18 not [177] notable [1] 96/14 notch [5] 17/18 23/7 24/5 73/21 75/8 notches [2] 23/15 28/9 note [2] 110/4 135/21 noted [1] 33/2 nothing [10] 10/6 24/20 32/14 44/23 44/23 122/14 122/25 124/3 132/4 143/7 notified [1] 32/1 notion [1] 102/24 now [38] 18/4 19/1 19/16 20/1 20/16 22/23 25/1 28/5 29/4 46/9 51/21 51/24 52/11 52/16 53/11 60/20 62/15 64/16 65/10 65/12 65/20 68/13 73/10 75/5 78/6 79/18 79/23 86/24 87/5 87/24 88/10 91/15 91/17 105/1 105/9 110/3 121/17 137/19 number [5] 37/11 37/22 68/18 68/20 68/21 numbered [3] 3/8 65/21 68/17 numbering [1] 61/6 numerous [1] 145/4</p>	<p>NW [1] 2/6 O O'CONNOR [1] 1/12 O'Kelley's [1] 114/21 O'KELLY [24] 4/5 6/18 6/25 14/5 14/10 16/22 22/21 27/8 28/24 29/5 31/21 39/9 39/13 39/21 44/12 84/20 98/6 98/12 117/3 117/9 117/16 120/2 126/18 131/7 O'Kelly's [1] 97/19 oath [2] 46/14 117/12 object [2] 119/21 132/21 objection [2] 6/7 32/13 obligated [1] 138/11 obtain [2] 144/10 144/13 obviously [3] 43/2 129/18 131/22 occur [7] 20/5 78/8 118/16 119/9 119/10 119/19 126/12 occurred [2] 119/18 121/25 occurring [2] 42/12 119/15 occurs [6] 12/3 120/15 120/20 123/7 123/8 124/7 OCTOBER [3] 1/9 5/2 146/15 off [8] 34/13 104/1 105/8 117/17 127/23 131/10 131/15 131/17 offer [2] 7/14 7/20 offers [1] 143/7 office [1] 8/7 officer [7] 8/12 8/18 46/24 47/2 49/6 50/11 99/16 officers [4] 7/23 47/15 48/24 50/13 Official [1] 146/18 officially [1] 135/22 okay [52] 5/10 6/5 6/11 6/15 15/11 17/12 18/7 18/9</p>
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<p>O okay... [44] 18/13 20/3 20/10 20/16 22/19 22/21 27/18 39/23 43/7 46/1 46/7 60/20 61/9 61/17 61/17 68/13 68/22 80/2 98/17 100/11 101/23 104/15 104/17 105/9 105/20 106/5 106/17 107/8 107/12 108/21 109/11 117/2 117/12 120/9 120/11 124/21 125/3 128/16 129/3 129/4 135/10 135/24 136/24 137/21 on [266] once [43] 8/7 8/8 8/9 14/19 17/23 24/14 24/22 25/12 29/23 30/14 31/8 33/19 36/25 53/24 66/13 66/22 70/20 72/8 74/11 76/19 79/14 81/10 96/12 96/20 107/4 108/1 112/20 113/8 118/7 118/23 120/18 121/6 123/16 125/13 125/15 125/19 125/22 126/6 130/14 130/23 137/5 142/4 142/5 one [101] 10/5 11/17 11/21 14/25 15/1 15/2 15/3 15/16 21/9 25/23 25/23 26/18 26/22 29/21 30/24 31/23 31/24 32/3 32/9 32/10 33/14 33/22 33/23 34/24 35/21 36/3 37/15 37/16 38/18 39/1 39/5 39/7 39/10 39/20 40/3 43/24 44/4 44/6 44/15 45/2 50/16 51/7 53/7 54/21 56/5 57/24 59/12 60/17 65/23 68/2 68/19 70/23 85/14 86/7 92/21 94/3 94/6 94/15 94/17 95/5 96/1 96/8 100/5 102/19</p>	<p>103/11 105/7 106/20 108/2 112/24 112/24 113/16 113/18 114/10 114/18 116/8 118/18 119/15 119/16 119/19 120/14 121/17 122/11 123/18 124/18 124/18 124/19 127/15 127/16 130/1 130/21 130/22 131/6 132/16 133/9 133/11 134/18 134/20 135/2 141/22 143/13 144/11 one-week [1] 31/23 ones [2] 15/2 54/8 online [1] 7/21 only [64] 20/5 21/18 22/24 24/23 25/7 26/9 28/11 28/13 40/22 43/20 45/18 48/24 51/21 53/5 55/21 67/7 74/17 74/22 76/3 76/9 76/14 79/14 86/5 86/5 86/6 86/9 86/17 86/21 90/1 90/24 92/8 92/21 93/2 97/13 98/3 102/19 103/11 105/6 107/25 109/5 109/8 111/10 112/23 113/7 113/16 113/17 115/2 116/5 116/8 118/17 121/16 121/17 123/5 123/16 129/13 130/14 138/20 141/19 142/4 142/5 142/18 142/25 143/12 144/6 oOo [1] 5/3 open [2] 43/13 98/6 open-bolt [1] 43/13 opening [1] 6/3 operable [1] 134/1 operate [5] 22/11 37/9 41/24 50/6 88/25 operates [4] 11/25 21/11 48/8 133/24 operating [3] 98/5 98/8 98/11</p>	<p>operation [46] 11/9 12/3 12/6 13/8 23/24 34/22 35/20 35/24 36/2 37/19 38/25 41/19 41/24 42/10 49/10 49/17 52/12 56/25 60/21 68/14 69/2 79/19 103/14 116/10 118/16 118/21 119/3 119/6 119/7 119/13 119/14 119/15 119/18 120/4 120/9 120/18 120/20 121/16 121/21 121/25 122/10 122/12 122/15 123/8 123/19 141/21 operations [10] 12/22 36/11 37/12 47/25 63/20 71/22 75/25 77/4 80/21 81/18 opinion [23] 20/23 21/4 21/6 34/19 99/11 99/12 99/21 99/21 99/22 100/12 100/15 100/23 101/17 102/5 105/3 135/12 135/12 135/23 135/25 136/7 136/9 136/23 137/13 opportunity [1] 139/17 opposition [2] 133/1 140/16 option [1] 88/14 options [2] 70/19 89/1 or [116] 8/12 10/3 10/12 10/18 10/22 11/1 11/2 11/5 12/1 12/7 14/22 15/20 15/25 16/12 17/1 19/9 19/23 20/3 20/23 22/15 28/17 29/15 33/13 33/15 33/16 33/19 34/2 34/10 34/13 34/13 35/25 37/9 37/15 40/8 44/19 45/15 47/6 48/2 48/3 48/4 48/7 49/2 49/11 49/19 50/2 51/9 51/15 51/15 53/1 53/2 53/10 55/5 56/11 60/14 67/9 69/7 69/24 73/17</p>
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<p>O or... [58] 79/16 79/16 81/8 81/17 86/7 88/22 92/20 95/7 95/13 96/17 97/5 98/6 99/3 100/24 101/2 102/17 104/3 105/21 105/21 106/10 106/11 107/9 107/21 108/1 113/23 117/18 118/13 118/22 120/4 122/18 123/23 125/6 126/10 126/20 127/4 127/11 129/2 131/1 131/25 132/4 132/18 132/25 133/4 134/1 135/11 135/19 136/20 138/18 138/18 138/21 139/20 140/10 140/10 140/25 144/12 145/9 145/9 146/9 oral [1] 98/16 orange [1] 70/14 order [9] 49/5 49/10 62/21 100/21 106/19 106/25 119/9 119/20 144/11 organization [2] 144/24 145/1 organizational [1] 144/23 original [6] 16/11 19/17 22/1 23/1 23/25 41/2 originally [2] 19/6 58/7 other [41] 9/5 10/19 11/1 11/5 12/13 13/2 15/20 23/12 26/13 30/3 32/3 37/4 48/17 50/14 56/18 56/20 57/3 57/8 57/9 59/13 62/23 71/3 74/1 75/23 79/2 80/15 82/2 82/4 83/19 85/15 88/14 100/17 103/5 129/13 131/21 133/25 139/9 139/13 142/18 143/15 144/10 others [1] 119/11 otherwise [3] 33/21 45/12 118/11</p>	<p>ounces [1] 86/7 our [19] 6/13 7/17 31/16 34/15 48/6 48/7 48/8 85/9 98/18 99/2 99/3 124/24 132/17 133/1 140/15 140/16 140/16 141/3 145/3 out [33] 19/9 24/18 25/1 30/25 34/21 39/25 44/18 45/7 47/17 60/13 71/7 75/11 75/13 76/1 76/16 78/2 88/21 110/8 114/10 119/17 120/24 121/9 121/22 125/17 128/2 128/16 132/25 135/3 135/4 137/16 140/25 145/5 145/17 outcome [1] 88/18 outcomes [2] 88/9 89/4 outfitted [1] 140/1 outside [3] 6/10 21/8 33/18 over [16] 13/20 23/9 24/17 26/10 32/1 33/3 35/1 37/3 42/14 48/12 48/14 56/17 64/8 121/18 135/18 138/16 overcome [14] 35/20 36/11 36/15 36/23 85/5 85/12 85/15 85/16 86/1 86/2 87/20 114/12 134/8 143/7 overcomes [2] 84/15 84/18 overcoming [4] 85/6 87/17 113/22 116/16 override [1] 116/12 overruled [3] 32/16 32/18 32/19 own [9] 14/14 14/18 45/14 51/18 51/21 68/3 104/1 124/7 140/1 owner [3] 20/22 20/25 21/2 owners [3] 138/9 138/13</p>	<p>138/21 P p.m [1] 145/22 P90 [3] 96/15 96/17 134/22 page [44] 39/21 39/24 60/25 61/2 61/4 61/5 61/6 61/6 61/8 61/16 63/4 63/21 63/22 64/9 65/20 65/21 65/22 66/3 66/4 66/4 68/17 68/24 68/25 71/22 72/13 72/24 74/24 74/25 75/1 79/21 79/24 79/25 80/24 82/7 82/7 83/12 83/12 86/24 87/22 94/3 101/2 104/15 127/13 127/22 pages [2] 57/20 64/8 pandemic [1] 146/8 panel [1] 49/7 papers [1] 141/3 paragraph [10] 39/24 40/1 40/3 40/17 101/2 104/19 104/22 105/9 105/10 105/25 Pardon [1] 67/21 part [23] 9/6 9/16 17/8 17/10 17/24 18/18 18/23 18/23 23/13 35/15 52/16 52/24 59/11 91/2 107/25 108/2 111/18 122/22 131/10 131/22 136/7 141/6 141/10 participants [1] 146/9 particular [1] 57/1 parts [11] 16/11 30/3 50/4 50/9 56/18 56/19 59/1 59/12 60/16 132/12 144/4 pass [1] 51/24 passage [1] 130/18 passed [2] 53/15 102/1 past [2] 54/4 73/24 patented [1] 13/13</p>
--	--	--

<p>P</p> <p>path [1] 84/1</p> <p>pattern [1] 58/13</p> <p>pause [2] 18/7 81/8</p> <p>paused [1] 22/19</p> <p>peer [3] 47/16 99/20 101/13</p> <p>pending [1] 139/17</p> <p>Pennsylvania [1] 51/4</p> <p>people [7] 7/22 10/6 12/18 140/1 140/5 145/11 145/12</p> <p>per [3] 15/1 36/18 42/17</p> <p>perfectly [1] 132/19</p> <p>perform [6] 94/21 95/11 96/1 96/8 141/24 142/9</p> <p>performing [3] 45/7 120/13 133/9</p> <p>performs [1] 94/15</p> <p>period [2] 132/2 132/7</p> <p>permission [1] 129/8</p> <p>person [5] 53/8 67/24 67/24 100/6 108/22</p> <p>personally [1] 51/18</p> <p>perspective [2] 36/17 74/3</p> <p>persuasive [1] 135/20</p> <p>pertains [1] 114/22</p> <p>phase [1] 63/20</p> <p>photo [1] 70/21</p> <p>phrase [3] 103/15 106/14 119/20</p> <p>phrased [1] 103/15</p> <p>phrases [1] 11/20</p> <p>physical [2] 35/23 120/24</p> <p>physically [7] 24/6 28/4 30/10 39/2 110/19 121/15 126/13</p> <p>pick [4] 49/18 75/25 78/23 117/16</p> <p>picture [5] 16/22 16/24 17/8 61/11 69/15</p> <p>pictures [1] 66/7</p> <p>piece [7] 24/2 62/8 69/20</p>	<p>69/25 70/14 70/25 116/4</p> <p>pieces [2] 62/23 82/2</p> <p>pin [25] 17/25 18/15 23/17 43/15 59/6 60/18 63/8 72/12 72/19 77/18 82/6 82/11 82/14 82/15 88/11 88/15 91/4 94/25 95/1 111/3 120/16 125/16 132/1 132/7 141/12</p> <p>pink [1] 69/17</p> <p>pins [1] 53/6</p> <p>pistol [6] 15/25 94/20 94/22 94/24 95/8 96/3</p> <p>pistols [2] 48/16 51/14</p> <p>Pittsburgh [1] 51/5</p> <p>pivot [7] 17/24 19/9 21/25 23/14 23/16 24/18 62/25</p> <p>pivoted [2] 18/14 73/11</p> <p>pivoting [2] 17/25 63/18</p> <p>pivots [4] 18/15 20/7 23/24 27/24</p> <p>place [9] 62/19 71/25 72/5 77/7 81/23 90/18 91/8 109/16 109/20</p> <p>placed [4] 62/18 71/5 72/4 90/21</p> <p>plain [2] 33/17 143/8</p> <p>plaintiff [3] 133/19 144/4 144/19</p> <p>plaintiffs [23] 1/6 1/15 5/7 5/9 6/17 99/2 129/10 129/18 129/22 137/25 138/3 138/6 138/11 138/12 138/15 138/23 139/24 143/17 143/24 144/2 144/3 144/19 144/23</p> <p>plaintiffs' [5] 2/11 4/4 29/1 31/14 90/9</p> <p>plan [2] 12/15 12/19</p> <p>planning [1] 128/23</p> <p>plans [2] 12/11 12/14</p> <p>plate [1] 95/8</p>	<p>play [12] 18/7 27/9 27/11 29/7 30/25 60/13 71/7 73/10 75/12 76/16 97/13 125/17</p> <p>played [2] 19/14 30/16</p> <p>plays [1] 105/2</p> <p>pleadings [1] 140/9</p> <p>please [11] 5/5 6/20 17/5 23/3 27/7 29/4 46/13 46/17 98/24 98/24 129/6</p> <p>plenty [1] 50/13</p> <p>plurality [4] 130/9 130/19 133/9 135/16</p> <p>plus [1] 33/8</p> <p>point [56] 10/16 16/10 18/17 19/5 19/7 19/19 22/18 23/19 23/20 23/21 24/12 25/6 25/11 26/6 27/21 27/25 30/1 31/24 33/24 38/19 63/10 64/1 64/14 66/18 72/17 73/5 75/7 75/16 76/2 81/17 83/21 88/3 88/6 88/12 88/17 89/12 91/12 91/14 91/18 92/15 92/17 94/4 97/3 107/24 109/15 109/19 109/25 110/13 115/18 118/13 121/5 125/24 126/9 126/10 133/16 144/16</p> <p>pointer [1] 17/3</p> <p>pointing [1] 17/16</p> <p>points [1] 132/1</p> <p>police [3] 7/23 8/18 10/12</p> <p>policy [1] 34/12</p> <p>portion [7] 62/3 69/15 73/10 89/16 135/24 136/8 137/12</p> <p>position [52] 6/13 7/3 15/22 17/21 18/20 18/21 18/25 19/2 19/3 19/17 21/19 21/21 22/1 23/22 23/25 24/8 24/11 24/15</p>
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<p>P</p> <p>position... [34] 24/19 28/4</p> <p>30/14 41/3 44/2 44/13</p> <p>46/23 62/16 62/17 66/11</p> <p>66/23 70/23 71/1 71/6</p> <p>72/5 76/7 76/12 78/14</p> <p>78/24 78/25 86/6 86/8</p> <p>97/1 97/10 101/15 109/16</p> <p>112/11 113/11 120/5 121/7</p> <p>134/4 135/22 140/8 141/2</p> <p>positions [1] 8/19</p> <p>possess [1] 144/11</p> <p>possessing [1] 140/3</p> <p>possession [3] 138/9</p> <p>143/20 144/7</p> <p>possible [7] 38/14 43/23</p> <p>88/9 88/18 114/13 114/14</p> <p>114/16</p> <p>possibly [2] 88/22 114/11</p> <p>Post [1] 1/16</p> <p>pound [1] 41/16</p> <p>pounds [20] 34/25 35/4</p> <p>35/9 35/14 36/18 37/1</p> <p>37/3 37/4 37/11 37/13</p> <p>37/14 37/16 37/18 37/21</p> <p>37/22 37/23 37/25 38/1</p> <p>38/1 42/17</p> <p>powder [1] 82/17</p> <p>power [1] 14/16</p> <p>practiced [1] 44/21</p> <p>practices [1] 14/7</p> <p>precisely [1] 135/8</p> <p>preliminary [2] 129/9</p> <p>129/15</p> <p>preparation [1] 142/17</p> <p>prepare [5] 47/7 48/22</p> <p>48/24 49/4 52/17</p> <p>prepared [3] 48/11 48/19</p> <p>140/8</p> <p>prescribed [1] 146/13</p> <p>present [3] 128/6 128/19</p> <p>128/24</p>	<p>presented [1] 139/3</p> <p>preserve [1] 6/7</p> <p>press [1] 54/10</p> <p>pressed [1] 87/7</p> <p>pressure [142] 15/23</p> <p>17/20 17/23 18/3 19/20</p> <p>23/17 24/3 26/11 36/17</p> <p>37/5 37/24 38/1 38/16</p> <p>38/17 38/21 38/24 40/9</p> <p>40/9 40/11 40/12 40/14</p> <p>41/6 41/8 41/10 41/12</p> <p>41/14 42/3 42/18 42/21</p> <p>42/23 42/24 43/1 43/2</p> <p>44/22 44/24 54/11 55/24</p> <p>56/3 56/7 60/3 62/20</p> <p>62/22 63/3 63/9 64/1</p> <p>64/13 65/1 65/2 65/14</p> <p>65/17 67/1 67/2 67/8 67/9</p> <p>67/11 68/8 72/6 72/9</p> <p>72/11 72/17 73/4 74/9</p> <p>74/15 74/18 74/21 74/23</p> <p>76/15 77/8 77/10 78/9</p> <p>78/12 79/2 79/15 81/24</p> <p>82/1 82/5 83/4 83/21 84/6</p> <p>84/10 84/12 84/15 84/17</p> <p>85/18 86/1 86/10 86/12</p> <p>86/16 86/22 87/8 87/15</p> <p>87/18 88/17 88/20 88/20</p> <p>89/25 90/19 90/21 90/25</p> <p>91/13 91/15 91/22 92/6</p> <p>92/9 92/23 93/4 93/7</p> <p>93/10 93/11 93/14 93/17</p> <p>104/5 104/7 105/20 106/19</p> <p>106/24 107/9 109/6</p> <p>109/23 116/19 116/23</p> <p>118/11 120/19 120/22 121/8</p> <p>124/3 126/5 126/10 126/10</p> <p>127/5 130/17 130/20</p> <p>130/24 130/25 131/20</p> <p>132/20 132/22 132/23</p> <p>133/4 133/5 133/7 140/10</p> <p>pretty [1] 36/15</p>	<p>prevented [1] 42/10</p> <p>prevents [4] 42/11 110/7</p> <p>131/14 132/6</p> <p>previous [1] 82/21</p> <p>previously [3] 32/6 83/11</p> <p>144/5</p> <p>primary [5] 72/1 75/12</p> <p>76/16 87/12 97/12</p> <p>primer [2] 82/15 82/16</p> <p>principle [1] 116/9</p> <p>prior [6] 35/1 49/8 49/11</p> <p>81/21 90/15 100/19</p> <p>privately [1] 10/11</p> <p>probably [5] 53/7 53/8</p> <p>53/9 68/19 94/4</p> <p>procedure [1] 34/12</p> <p>proceeding [1] 35/1</p> <p>proceedings [5] 57/24</p> <p>98/21 145/22 146/6 146/10</p> <p>process [10] 23/2 65/10</p> <p>65/12 65/12 76/17 90/7</p> <p>92/7 123/15 123/23 141/7</p> <p>produce [1] 11/3</p> <p>produced [5] 3/9 14/21</p> <p>14/22 16/6 54/3</p> <p>produces [1] 127/15</p> <p>product [2] 56/16 57/1</p> <p>profession [1] 7/8</p> <p>program [2] 7/17 9/4</p> <p>programs [3] 2/6 7/14</p> <p>7/16</p> <p>progressive [1] 96/24</p> <p>prohibited [1] 67/24</p> <p>projectiles [2] 137/1</p> <p>137/16</p> <p>prolific [1] 58/8</p> <p>propel [1] 137/15</p> <p>propellant [1] 82/16</p> <p>propels [1] 82/17</p> <p>properly [1] 96/17</p> <p>proposed [1] 144/15</p> <p>prosecute [2] 33/13 145/9</p>
--	--	--

<p>P</p> <p>prosecution [1] 47/10</p> <p>protect [7] 144/1 144/6 144/6 144/7 144/9 144/18 144/22</p> <p>protected [3] 144/20 145/11 145/13</p> <p>protrusion [1] 83/17</p> <p>prove [3] 33/18 34/4 34/7</p> <p>proven [1] 33/15</p> <p>proves [1] 107/24</p> <p>provide [2] 47/13 47/24</p> <p>provided [1] 40/2</p> <p>public [5] 7/9 8/2 47/6 100/12 138/18</p> <p>publications [2] 47/22 47/22</p> <p>published [1] 100/12</p> <p>pull [53] 22/5 24/24 25/10 26/9 26/19 29/4 34/23 35/10 35/19 35/22 35/24 36/5 36/14 36/15 36/25 41/23 43/6 55/2 55/8 55/25 77/12 94/17 96/2 96/25 97/2 97/5 97/9 97/16 97/17 102/25 103/5 105/11 105/17 106/9 106/14 109/21 109/22 109/25 111/2 112/24 116/12 124/2 126/3 126/7 127/4 134/20 134/24 135/4 137/3 137/9 137/13 137/19 140/21</p> <p>pulled [9] 24/7 25/3 27/23 63/1 94/23 95/12 95/15 110/6 118/5</p> <p>pulling [10] 26/5 27/1 103/3 103/6 120/24 126/11 127/14 133/10 134/21 137/2</p> <p>pulls [3] 23/12 37/2 108/22</p> <p>purchasers [1] 138/19</p>	<p>purple [1] 87/7</p> <p>purpose [11] 43/16 70/2 70/16 80/19 92/20 94/13 95/23 96/6 125/7 140/25 141/15</p> <p>purposes [8] 95/18 97/20 99/2 105/15 116/2 121/15 128/22 130/11</p> <p>push [12] 18/19 40/8 41/4 55/22 79/10 84/3 84/11 85/20 85/23 86/5 92/4 135/14</p> <p>pushed [5] 23/22 64/5 73/3 73/24 91/13</p> <p>pushes [6] 21/25 71/6 84/4 89/16 125/4 125/9</p> <p>pushing [8] 23/8 23/24 36/20 36/21 63/19 84/22 89/15 91/25</p> <p>put [12] 6/16 10/25 11/4 11/5 17/4 25/6 36/16 37/21 38/16 92/24 107/15 109/24</p> <p>putting [2] 133/25 136/22</p> <hr/> <p>Q</p> <p>qualifications [1] 49/3</p> <p>qualified [7] 10/5 13/15 32/15 49/5 49/6 49/10 49/12</p> <p>qualifies [1] 20/24</p> <p>qualify [3] 6/18 50/10 50/17</p> <p>qualifying [1] 11/20</p> <p>quantify [1] 50/20</p> <p>question [19] 9/9 11/24 27/10 32/21 33/6 36/24 38/6 42/21 100/1 119/22 119/24 126/20 128/8 129/14 129/25 133/17 139/3 143/15 143/19</p> <p>questioned [1] 114/20</p> <p>questions [12] 44/7 45/21</p>	<p>106/7 115/10 115/11 116/13 117/1 126/23 127/20 133/13 139/19 145/18</p> <p>quickly [3] 26/2 26/4 140/18</p> <p>quo [1] 143/21</p> <p>quote [1] 143/3</p> <p>quotes [1] 105/10</p> <hr/> <p>R</p> <p>R15 [1] 16/8</p> <p>raise [3] 6/20 7/7 46/13</p> <p>raised [1] 143/19</p> <p>rambling [1] 119/23</p> <p>range [3] 9/4 13/3 13/3</p> <p>Rare [3] 21/2 35/3 39/17</p> <p>Rarebreed [1] 29/13</p> <p>rate [2] 102/12 102/15</p> <p>rather [4] 6/10 22/25 119/13 123/12</p> <p>ray [1] 17/1</p> <p>RDR [3] 3/2 146/4 146/17</p> <p>re [1] 19/11</p> <p>reach [7] 21/4 21/6 21/12 23/10 53/18 78/13 91/17</p> <p>reached [4] 24/4 76/7 88/2 121/7</p> <p>reaches [1] 18/21</p> <p>reaching [1] 145/5</p> <p>read [8] 39/11 39/25 40/17 127/8 127/10 127/12 130/18 137/18</p> <p>reading [1] 143/8</p> <p>ready [8] 6/1 44/2 62/16 69/12 71/23 77/5 81/20 90/16</p> <p>really [5] 28/16 36/22 36/22 132/16 144/1</p> <p>reapply [3] 65/2 67/2 132/23</p> <p>rear [27] 24/17 26/6 26/19 27/23 27/24 29/23 30/11 37/5 38/2 38/8</p>
---	---	---

R	109/23 110/6 113/1 141/23 142/5	REED [1] 1/12
rear... [17] 38/22 44/16		reengage [10] 19/5 19/11
55/9 56/1 72/12 77/12	reason [1] 136/6	21/24 22/12 26/8 28/13
82/15 85/13 87/10 114/12	reasons [1] 143/23	79/15 133/4 142/2 142/8
120/12 125/5 125/14	rebut [1] 128/19	reengagement [4] 19/24
125/15 125/19 126/3	rebuttal [5] 4/9 31/16	23/25 28/20 30/13
126/13	117/4 117/14 128/17	reengages [4] 43/25 44/1
rearmost [1] 75/7	recall [8] 28/17 35/2 35/5	109/12 121/6
rearward [116] 17/22	35/12 35/15 35/16 39/19	reengaging [1] 124/9
17/23 18/9 18/18 19/3	116/13	refer [1] 119/13
20/6 22/3 22/5 23/13	recapture [1] 142/16	reference [2] 27/22 47/21
23/18 24/7 24/12 25/8	recaptures [1] 38/20	referred [2] 20/8 121/23
25/10 28/1 28/11 36/19	receive [2] 51/9 56/17	referring [5] 16/14 19/24
40/8 40/9 40/11 40/14	received [1] 51/11	42/22 55/13 119/14
41/8 41/12 41/14 42/18	receiver [2] 76/22 90/13	refers [1] 141/15
43/1 43/2 44/13 45/16	recess [1] 145/19	regarding [1] 138/19
45/19 54/10 56/3 56/7	rechamber [2] 19/20 24/13	regardless [1] 98/11
62/20 63/9 63/14 63/17	recock [2] 18/19 121/5	regular [1] 21/20
63/22 63/25 64/6 64/13	recocked [2] 23/22 118/13	regularly [1] 51/22
65/14 65/17 67/11 72/6	recocking [1] 123/10	regulation [2] 93/21
72/9 72/16 72/22 72/25	recocks [1] 125/19	106/15
73/4 73/18 74/14 74/18	recognize [5] 16/24 22/22	regulatory [4] 105/2 105/5
74/21 75/16 76/15 77/8	39/10 39/11 135/19	105/10 140/13
77/10 77/18 77/24 78/1	recognized [2] 56/24	reinvent [1] 101/1
78/3 78/9 78/12 78/13	138/25	reiterated [1] 130/9
79/2 81/23 82/1 83/3	reconvened [1] 98/22	reject [1] 140/19
83/10 83/20 84/1 84/6	record [5] 6/9 53/12	relate [1] 34/2
84/11 84/12 84/15 84/19	127/23 135/22 146/6	related [3] 13/2 33/4 33/9
85/18 86/1 87/15 87/18	recross [2] 46/2 46/4	relates [2] 120/3 135/10
89/25 90/3 90/19 90/21	red [2] 80/9 87/6	relating [1] 138/1
90/25 91/13 91/15 91/18	redefine [1] 98/7	relation [4] 81/4 122/19
91/21 92/6 107/18 110/13	redefined [1] 98/5	122/24 122/25
111/2 111/6 111/8 111/11	redirect [9] 4/8 4/15	relative [1] 115/2
111/14 112/10 112/20 113/11	44/10 46/5 98/16 115/12	release [58] 15/19 15/20
121/4 121/7 125/11 126/11	128/7 128/13 128/14	15/21 15/21 17/13 17/14
130/16 130/23 132/20	reduce [8] 55/24 65/1	19/7 19/10 20/12 22/4
132/23 133/3 133/8 134/4	67/1 67/9 68/8 93/7 93/10	24/7 26/20 27/2 30/22
134/17 137/19 140/9	116/23	30/24 31/6 38/18 38/22
142/24	reduced [5] 74/9 93/11	39/2 42/3 42/5 43/9
rearwards [14] 62/21	93/14 116/19 120/19	43/17 43/20 44/1 54/12
63/19 64/4 83/1 89/17	reduces [3] 60/3 86/9	54/16 55/3 67/9 72/20
89/18 97/11 109/21 109/22	109/5	76/6 79/11 81/10 97/4

<p>R</p> <p>release... [24] 97/21 106/19 106/25 107/18 107/25 108/10 108/13 111/3 111/7 111/14 111/21 114/22 114/25 118/5 123/5 125/16 126/4 131/19 132/22 133/5 140/11 141/6 141/11 142/5</p> <p>released [9] 18/14 19/16 20/4 43/4 74/12 112/21 115/19 115/19 116/17</p> <p>releases [12] 26/11 42/8 43/12 79/15 97/3 108/22 111/1 111/20 115/2 116/16 130/25 131/20</p> <p>releasing [16] 25/11 30/12 43/14 45/8 55/5 107/9 107/25 108/1 108/4 108/8 108/14 108/15 108/18 124/8 130/16 141/24</p> <p>relevant [4] 92/13 94/10 97/20 130/10</p> <p>relief [8] 129/9 137/25 138/12 139/20 143/18 144/5 144/16 144/21</p> <p>relies [1] 103/1</p> <p>reload [2] 14/23 42/13</p> <p>reloading [3] 11/22 94/6 130/2</p> <p>reloads [1] 14/13</p> <p>rely [1] 93/21</p> <p>remain [1] 117/12</p> <p>remainder [1] 30/25</p> <p>remaining [1] 15/2</p> <p>remains [2] 125/10 134/17</p> <p>remarks [1] 6/3</p> <p>remote [1] 30/17</p> <p>remove [1] 53/5</p> <p>removing [1] 114/17</p> <p>render [1] 20/23</p> <p>repairs [1] 49/20</p> <p>repeat [2] 61/19 140/17</p>	<p>repeated [1] 26/2</p> <p>repeatedly [2] 111/21 130/5</p> <p>repeating [1] 25/4</p> <p>repetition [1] 142/22</p> <p>replace [1] 95/8</p> <p>reply [2] 140/15 145/3</p> <p>report [31] 32/25 39/12 42/17 52/17 53/11 53/16 53/18 60/24 60/25 63/4 63/21 64/9 65/20 68/16 74/24 79/21 86/24 87/22 94/3 99/15 100/15 101/4 101/6 101/12 104/10 104/13 104/16 110/3 130/8 131/13 140/14</p> <p>reported [1] 3/8</p> <p>reporter [5] 3/2 3/2 98/18 124/24 146/18</p> <p>Reporter's [2] 4/16 146/2</p> <p>reports [11] 47/7 48/4 48/10 48/14 48/19 48/22 48/25 49/4 54/3 100/19 100/20</p> <p>request [1] 52/5</p> <p>require [7] 53/2 53/4 68/5 68/9 81/14 108/18 122/6</p> <p>required [15] 28/6 34/23 35/10 35/14 36/10 36/13 41/20 42/1 42/3 49/3 74/14 74/19 112/1 129/16 143/12</p> <p>requirement [1] 127/14</p> <p>requires [6] 27/5 37/22 106/18 106/24 144/13 144/14</p> <p>rereleased [1] 123/11</p> <p>RESAR [3] 2/4 5/12 45/23</p> <p>Resar.....46 [1] 4/13</p> <p>Resar.....115 [1] 4/15</p>	<p>reserve [2] 31/15 98/15</p> <p>reset [54] 21/19 21/19 21/21 21/22 22/8 22/12 23/9 24/4 25/18 26/23 28/3 31/3 38/20 40/4 40/6 40/24 41/5 41/7 41/11 42/19 42/19 42/24 44/13 45/10 45/11 54/22 55/16 55/19 55/23 55/25 57/4 57/8 57/9 65/2 65/8 66/8 67/2 68/8 84/21 86/6 108/15 109/12 109/16 112/17 113/4 113/12 113/23 116/13 116/16 138/10 138/13 139/8 142/2 142/15</p> <p>reset-type [1] 55/16</p> <p>resets [4] 19/23 40/11 114/9 142/20</p> <p>resetting [3] 19/22 22/16 42/11</p> <p>resistance [1] 85/4</p> <p>respectfully [1] 139/10</p> <p>respects [1] 138/7</p> <p>rest [4] 42/12 78/25 98/15 137/5</p> <p>restorations [1] 49/20</p> <p>restrain [2] 115/22 115/25</p> <p>restraining [1] 132/5</p> <p>restricted [1] 18/2</p> <p>restricts [1] 16/9</p> <p>result [2] 45/2 120/14</p> <p>results [1] 41/4</p> <p>retain [9] 25/18 59/12 60/2 75/24 76/4 76/10 80/22 81/8 92/17</p> <p>retained [3] 65/14 74/8 110/5</p> <p>retaining [3] 64/22 66/17 78/7</p> <p>retains [5] 85/18 85/18 89/5 97/4 115/17</p> <p>return [6] 32/1 40/8</p>
---	--	--

<p>R</p> <p>return... [4] 40/25 41/6 66/11 86/8</p> <p>returned [3] 66/22 76/11 76/12</p> <p>returning [1] 109/8</p> <p>returns [1] 109/3</p> <p>review [3] 47/16 101/13 101/14</p> <p>reviewed [1] 101/4</p> <p>revolved [1] 140/9</p> <p>revolver [1] 12/2</p> <p>revolvers [2] 48/16 94/17</p> <p>reward [1] 62/22</p> <p>rewrite [1] 12/13</p> <p>ridiculous [1] 122/8</p> <p>rifle [6] 15/25 16/1 16/2 27/19 29/12 58/13</p> <p>rifles [4] 48/17 51/15 52/22 58/11</p> <p>right [61] 5/18 6/4 17/17 20/1 20/11 22/23 24/16 29/11 30/20 31/2 31/5 32/6 51/21 61/5 61/16 68/20 68/21 75/2 75/12 77/11 79/21 79/23 79/25 82/8 85/10 86/25 87/12 87/23 88/10 92/11 101/15 101/18 102/21 103/19 106/15 107/10 107/19 108/23 109/1 109/4 109/17 109/21 110/17 110/20 110/23 111/4 111/11 112/11 112/22 113/1 113/8 113/13 113/20 114/23 127/6 133/23 136/11 137/7 137/9 137/10 145/15</p> <p>right-hand [8] 61/5 61/16 68/20 68/21 75/2 79/21 79/23 79/25</p> <p>rights [5] 1/5 144/12 144/24 145/1 145/6</p>	<p>rise [3] 5/4 98/23 145/21</p> <p>risk [1] 142/22</p> <p>RMR [3] 3/2 146/4 146/17</p> <p>role [2] 47/4 141/9</p> <p>Room [1] 2/6</p> <p>rotated [1] 73/3</p> <p>rotates [1] 64/4</p> <p>rotating [2] 63/18 83/15</p> <p>round [31] 29/14 29/15 30/7 30/22 30/23 34/24 35/21 37/15 37/16 41/17 55/2 55/2 55/10 56/5 67/5 72/20 76/1 76/1 78/23 78/23 88/11 88/19 93/1 112/4 112/7 125/14 125/23 125/24 134/11 135/3 135/3</p> <p>rounds [12] 38/9 38/15 97/6 112/9 112/14 112/19 112/21 113/6 113/20 116/23 116/25 135/4</p> <p>row [1] 121/22</p> <p>RTF [1] 39/22</p> <p>rub [2] 25/22 26/3</p> <p>rule [1] 102/1</p> <p>ruling [1] 145/17</p> <p>run [2] 128/2 128/16</p> <p>running [1] 9/3</p> <p>runs [2] 44/18 132/25</p> <hr/> <p>S</p> <hr/> <p>safe [13] 24/15 54/12 70/19 76/9 81/6 81/11 88/6 115/18 120/19 121/17 125/23 131/25 132/2</p> <p>safety [4] 71/4 94/25 95/1 121/16</p> <p>said [16] 37/10 41/20 41/23 54/6 58/17 68/7 76/3 86/4 87/19 90/1 96/2 98/6 101/3 122/9 132/3 141/17</p> <p>sake [2] 27/14 36/24</p>	<p>same [26] 17/6 22/24 23/2 23/12 24/2 24/16 28/6 28/13 30/6 30/9 38/21 41/15 42/4 80/14 80/24 86/21 89/13 100/21 113/19 114/18 126/11 128/19 132/13 132/15 133/24 142/11</p> <p>sample [1] 94/9</p> <p>samples [1] 47/5</p> <p>San [1] 1/17</p> <p>satisfied [1] 10/21</p> <p>satisfies [5] 58/22 69/7 127/13 130/13 135/20</p> <p>saw [3] 25/6 36/3 61/22</p> <p>sawed [1] 34/13</p> <p>sawed-off [1] 34/13</p> <p>say [29] 13/20 16/14 16/17 16/20 19/22 28/17 30/6 32/17 35/13 35/18 37/4 42/16 43/19 51/6 54/8 58/10 61/16 71/8 71/12 97/2 102/23 105/10 105/11 106/1 108/1 121/20 122/1 131/7 145/7</p> <p>saying [7] 10/7 44/5 98/8 102/2 103/13 108/3 115/2</p> <p>says [12] 11/20 29/10 29/12 41/9 41/13 42/20 42/20 61/6 107/23 127/13 128/11 136/9</p> <p>scale [2] 138/13 138/20</p> <p>scenario [2] 39/1 99/24</p> <p>schedule [1] 50/4</p> <p>school [8] 10/10 10/24 10/25 51/1 51/3 51/4 51/6 51/10</p> <p>schools [5] 10/16 10/23 13/1 33/25 51/7</p> <p>scope [5] 129/8 137/24 139/20 143/18 144/22</p> <p>screen [6] 16/22 17/6</p>
--	--	---

<p>S screen... [4] 22/23 27/21 29/14 36/4 sear [77] 59/7 59/9 59/10 59/15 59/17 59/18 59/20 63/1 63/6 64/7 64/10 64/11 64/16 64/17 69/21 70/2 70/15 70/24 71/1 72/1 72/7 72/10 73/7 73/9 73/12 73/18 73/19 73/20 73/21 73/22 73/23 73/24 73/25 74/11 75/8 75/8 75/9 75/12 75/21 75/22 75/23 76/3 76/4 76/6 76/16 77/11 77/23 78/3 78/5 78/6 78/6 79/10 82/3 82/10 87/10 87/12 97/12 97/14 109/4 110/5 111/18 111/21 112/4 112/7 112/14 113/7 115/14 115/16 117/24 122/20 123/10 123/12 123/21 125/4 125/8 125/10 132/11 search [1] 10/18 seat [3] 6/22 46/16 121/12 seated [4] 5/5 98/24 98/24 98/25 second [13] 14/14 22/16 25/8 26/25 39/20 45/12 80/1 104/15 107/1 138/22 144/3 144/16 144/22 section [3] 93/21 104/18 129/12 sections [1] 101/6 Security [1] 8/8 see [53] 17/10 17/16 17/25 18/13 18/22 18/24 19/13 19/15 23/6 23/11 23/21 23/23 24/10 24/17 24/25 24/25 27/20 27/22 28/3 28/19 29/9 29/10 29/14 29/18 29/21 29/22 30/7</p>	<p>30/10 30/15 56/18 56/20 68/19 70/24 73/2 73/10 73/21 75/7 75/10 75/12 77/11 78/2 78/3 83/17 88/4 91/10 91/10 103/4 104/20 124/14 124/24 125/21 127/7 132/16 seeing [9] 18/8 23/4 28/15 28/16 75/6 83/14 83/15 87/4 117/23 seek [1] 139/17 seeking [1] 137/25 seem [3] 17/4 18/10 135/15 seemingly [1] 140/12 seen [1] 39/9 select [3] 70/18 70/20 96/24 selected [2] 49/2 49/3 selector [6] 70/10 70/13 70/16 70/21 71/4 72/4 selects [1] 97/17 self [9] 14/13 14/15 14/24 14/25 15/5 15/13 15/15 36/1 118/3 self-loaded [1] 14/15 self-loading [8] 14/13 14/24 14/25 15/5 15/13 15/15 36/1 118/3 sellers [2] 138/18 143/25 sells [1] 144/4 semiautomatic [44] 12/3 14/11 14/25 15/4 16/1 16/16 21/14 21/16 28/12 29/12 35/25 40/14 40/23 40/24 50/24 58/6 58/11 59/21 59/23 59/25 61/24 65/11 65/15 66/14 67/13 70/19 74/3 74/7 90/12 93/3 97/1 97/10 97/15 107/2 108/5 108/6 108/14 134/25 135/3 142/1 142/12 142/14 142/19 142/23</p>	<p>semiautomatically [1] 97/7 Seminars [1] 77/19 send [3] 10/11 34/18 34/21 senior [1] 47/16 sense [1] 38/4 sent [3] 10/12 94/9 132/17 sentence [2] 41/9 42/21 sentences [1] 127/12 separate [4] 27/5 28/19 45/7 142/9 separation [1] 120/21 sequence [65] 53/24 55/3 55/7 55/11 56/1 59/3 65/3 67/3 68/2 71/24 74/13 74/15 74/20 79/12 81/9 81/21 86/18 86/23 90/16 91/1 92/17 92/21 93/3 93/6 93/9 94/11 94/14 94/18 95/2 95/24 96/7 96/13 96/20 97/10 97/16 98/10 103/2 103/10 104/2 107/5 107/6 107/22 108/7 108/9 108/13 108/15 108/20 110/24 112/24 113/3 115/1 116/6 116/7 119/5 120/4 121/19 122/1 130/6 130/12 130/14 132/1 136/5 136/18 136/19 137/5 series [1] 89/23 serve [5] 7/12 47/15 50/11 77/21 96/3 served [1] 10/18 serves [10] 7/7 30/24 94/13 95/24 96/6 118/20 121/5 122/10 123/5 132/14 service [1] 8/8 services [1] 47/17 serving [2] 18/18 132/13 set [1] 12/24 setting [1] 60/13 setup [2] 29/8 68/10 seven [4] 8/22 121/22</p>
---	--	--

<p>S seven... [2] 121/23 121/25 several [5] 9/5 9/21 11/19 60/16 140/5 She's [1] 137/21 shoe [20] 62/23 73/5 74/15 78/9 78/12 83/5 84/5 84/8 84/11 84/22 84/22 85/19 86/2 86/12 87/15 87/17 89/25 92/7 92/10 132/21 shoot [10] 24/15 26/4 43/6 51/22 81/11 85/9 85/10 95/9 121/18 130/15 shooter [73] 14/19 17/23 19/4 19/7 19/21 22/5 23/12 24/23 25/10 26/5 26/9 26/11 29/22 37/2 37/23 38/7 38/13 40/4 40/6 40/10 40/13 41/7 41/11 41/13 42/15 42/25 43/3 62/15 62/22 63/9 63/25 64/13 66/24 68/6 72/2 72/8 72/16 73/4 76/13 76/14 77/6 77/10 78/11 79/1 81/22 81/25 83/20 84/12 87/14 89/24 90/1 90/17 91/21 92/5 92/24 93/5 93/8 103/20 103/22 104/5 106/2 110/6 118/12 120/11 120/22 125/14 126/2 126/5 126/11 130/16 131/20 140/19 141/1 shooter's [4] 24/21 25/5 125/20 125/25 shooting [2] 42/14 130/1 shoots [2] 11/21 94/5 short [1] 34/13 short-barrel [1] 34/13 shorthand [1] 58/10 shot [83] 11/21 15/1 15/3 15/16 20/4 22/9 22/16</p>	<p>24/24 25/3 25/8 25/12 25/14 25/17 25/23 26/5 26/7 26/20 26/21 26/25 27/6 27/22 27/25 28/21 29/15 29/16 29/25 30/7 30/8 30/11 30/14 30/25 31/3 31/6 31/8 38/18 38/23 39/1 40/15 40/15 43/18 44/3 45/1 45/2 45/7 45/10 45/11 45/12 45/16 82/19 94/6 94/15 96/1 96/9 102/20 106/20 107/1 107/17 111/13 112/1 113/16 113/18 119/16 120/15 121/17 121/18 123/5 123/20 124/7 124/9 124/9 126/2 126/15 127/16 130/1 131/19 134/21 141/22 141/25 142/9 142/15 142/17 142/25 143/13 shotgun [3] 15/25 34/13 34/13 shotguns [2] 48/2 48/16 shots [23] 12/4 29/15 29/16 29/17 30/5 31/1 44/14 44/17 106/25 107/3 111/22 116/17 119/17 121/22 121/23 123/17 123/20 125/17 142/4 142/6 142/7 142/10 142/12 should [5] 6/8 138/20 139/1 139/17 143/20 show [20] 23/3 63/5 63/22 64/10 66/2 66/7 69/10 72/14 72/25 76/17 77/9 77/22 79/5 82/9 90/20 91/6 92/1 129/10 129/16 129/22 showed [1] 31/24 showing [5] 63/6 87/6 87/7 87/10 87/12 shown [1] 25/14</p>	<p>shows [6] 12/6 69/11 87/1 87/24 132/18 133/3 side [10] 61/1 61/11 61/23 68/23 68/24 79/23 79/25 80/23 87/9 87/12 sidearms [1] 51/14 sides [1] 29/17 signed [2] 101/13 146/15 significantly [1] 138/3 silencers [1] 48/3 similar [7] 26/23 54/4 54/7 54/8 54/14 54/22 55/18 similarity [1] 55/21 similarly [2] 106/9 141/10 simple [2] 134/13 141/7 simply [5] 59/2 59/10 59/18 81/5 131/2 simulate [1] 79/6 simultaneously [1] 119/11 since [6] 6/8 13/5 13/6 13/18 23/2 128/16 single [42] 11/22 15/3 15/6 15/16 38/10 39/2 94/6 94/15 96/1 96/13 96/20 102/24 103/13 103/19 105/6 105/11 105/11 105/16 105/17 106/1 106/23 108/17 120/3 120/6 120/13 120/14 120/14 124/2 124/2 124/5 127/4 130/2 131/19 137/1 137/3 137/9 137/14 137/19 140/21 141/14 142/6 142/13 sir [6] 6/21 7/9 11/16 40/21 117/12 117/13 situation [2] 118/18 139/5 skill [2] 53/2 53/4 skip [1] 106/7 skipping [1] 64/8 SLEY [2] 1/22 5/22 slide [1] 95/8</p>
---	--	---

<p>S slightly [4] 85/17 92/24 134/11 136/22 small [6] 51/12 51/13 51/14 51/16 138/13 138/20 small-arms [1] 51/12 small-scale [2] 138/13 138/20 smaller [1] 51/15 snapshot [1] 82/22 so [198] solely [5] 50/15 99/12 101/9 101/17 110/5 some [35] 8/3 10/16 10/21 11/2 11/5 15/19 19/7 26/17 33/3 33/8 43/12 43/14 44/24 48/1 49/8 53/13 54/11 55/4 57/19 58/25 60/23 75/16 84/12 100/12 101/6 101/24 103/22 114/13 114/20 119/10 128/1 128/6 131/23 135/18 146/8 somehow [1] 103/25 someone [3] 49/16 50/15 133/25 someplace [1] 43/5 something [20] 10/2 38/5 39/4 52/24 53/10 59/14 69/21 70/10 99/15 99/17 100/5 100/24 100/25 101/1 104/1 104/9 106/10 106/11 123/14 132/6 somewhere [3] 134/7 144/13 144/14 soon [3] 24/3 76/6 76/11 sorry [21] 8/8 14/22 32/17 33/5 34/6 39/20 40/5 40/16 46/1 61/4 61/19 65/24 69/24 75/1 97/5 106/21 125/1 128/3 135/14 138/16 145/17 sort [4] 10/17 134/6</p>	<p>144/20 145/7 sought [1] 138/12 sound [1] 35/9 sounds [3] 35/11 99/4 141/18 sparingly [1] 139/1 speak [5] 27/15 118/1 124/23 124/23 137/24 speaking [1] 105/18 speaks [1] 106/12 special [5] 9/6 14/5 49/3 53/2 53/4 Specialist [2] 7/1 7/5 specially [1] 33/22 specific [4] 13/7 50/1 50/3 115/3 specifically [2] 34/10 120/6 speed [1] 55/7 spent [5] 8/22 9/1 9/3 32/3 121/1 splitting [2] 126/9 135/15 splitting-hairs [1] 126/9 spoke [1] 133/14 spring [33] 15/22 17/20 18/3 19/20 21/20 21/23 23/17 24/3 40/8 40/12 40/25 41/6 43/15 63/3 72/11 82/5 84/21 85/3 85/8 85/19 86/3 86/4 113/23 114/5 114/6 114/8 114/10 114/11 114/15 114/17 121/8 134/8 142/20 spring-loaded [1] 43/15 square [6] 36/18 75/7 75/10 75/12 87/9 87/11 ST15 [1] 16/8 staff [3] 8/25 8/25 9/2 stage [1] 138/4 stand [1] 91/6 stand-in [1] 91/6 standard [18] 21/23 27/19</p>	<p>40/14 60/21 61/24 67/13 68/14 76/23 93/3 108/5 108/6 108/13 131/5 140/10 140/10 140/11 140/22 141/19 standards [1] 140/17 standing [3] 138/12 138/15 139/20 start [21] 23/9 26/10 42/14 42/14 45/1 61/2 63/14 72/23 77/18 78/14 79/21 86/22 91/18 97/1 97/15 101/2 104/8 121/18 124/20 128/21 129/24 started [3] 8/22 23/8 98/19 starting [2] 18/10 82/1 starts [3] 40/4 63/17 121/7 state [6] 9/15 13/19 33/18 33/21 47/12 106/21 stated [1] 139/2 statement [7] 84/24 97/23 97/24 100/12 118/20 127/18 128/12 statements [4] 128/1 138/18 138/19 145/7 states [9] 1/1 1/12 3/2 8/7 8/13 33/20 99/9 141/12 146/14 stating [1] 137/19 stationary [1] 30/3 status [5] 67/10 85/6 90/2 91/16 143/21 statute [10] 101/20 106/10 106/12 107/13 113/25 129/24 130/3 133/22 141/19 143/11 statutory [20] 10/5 10/13 11/13 58/22 69/7 93/25 94/2 94/8 95/18 101/18 102/11 105/5 122/5 124/3</p>
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<p>S statutory... [6] 127/5 130/11 130/13 143/2 143/3 143/8 stay [2] 139/16 139/17 stays [1] 30/2 steel [4] 24/8 24/8 45/13 45/13 steel-on-steel [1] 24/8 stenography [1] 3/9 step [23] 12/1 12/1 46/7 65/9 109/8 117/2 117/5 118/15 118/24 118/25 118/25 119/1 119/2 120/17 120/18 120/20 120/23 120/25 121/4 121/10 121/11 121/14 123/7 steps [15] 12/6 25/23 36/3 42/12 56/14 56/24 56/25 118/16 119/7 119/8 119/9 119/10 119/15 119/19 120/17 Steyr [2] 96/15 96/17 stick [1] 68/18 still [26] 12/12 16/4 19/2 19/3 22/23 55/24 61/12 61/21 63/9 63/25 64/13 72/14 72/16 73/4 80/2 83/20 84/2 87/14 87/22 91/15 95/11 104/13 110/6 121/17 140/20 142/24 stocks [2] 101/24 102/5 Stoner [2] 16/3 58/8 stop [17] 23/19 35/21 36/5 60/1 60/4 60/5 75/15 76/4 79/13 79/14 80/21 92/25 93/3 93/5 93/8 118/20 122/10 stopped [3] 18/13 110/18 122/15 stopping [1] 110/17 stops [5] 26/12 35/25</p>	<p>38/25 45/15 119/3 stream [1] 29/20 street [5] 1/16 2/6 3/3 8/23 146/20 strength [1] 35/23 strengthen [2] 114/5 114/8 strike [6] 18/15 23/17 41/1 72/11 82/5 131/25 striker [3] 15/21 43/15 98/5 strikes [5] 59/6 82/14 88/11 88/15 120/15 string [5] 31/1 121/22 121/24 121/24 123/6 stripping [1] 121/9 strong [3] 36/15 36/22 86/6 stronger [3] 114/6 114/10 114/15 strongly [2] 41/23 133/1 struck [4] 63/7 72/19 82/11 91/4 style [1] 52/22 styled [1] 3/8 subject [4] 20/17 49/7 130/23 133/3 submitted [3] 47/5 47/8 132/25 subsequent [5] 20/4 44/3 97/6 107/3 108/7 Subsequently [1] 111/1 substantial [1] 139/3 success [3] 129/7 129/10 129/17 successfully [1] 10/15 successive [1] 123/20 such [11] 43/13 48/2 66/23 85/4 92/17 98/5 118/3 118/5 118/8 118/9 123/4 sufficient [3] 86/1 129/22 134/7</p>	<p>sufficiently [1] 144/6 Suite [3] 1/15 17/20 17/23 sum [3] 27/4 111/13 142/10 summarize [2] 68/1 82/19 summations [1] 128/6 Sunday [1] 31/24 superimposed [1] 27/21 supersede [1] 45/14 supplied [1] 143/1 supply [1] 131/1 support [1] 100/7 supposed [1] 103/9 Supreme [1] 138/25 sure [19] 17/6 23/6 37/9 37/14 42/20 48/6 77/11 77/25 79/8 90/22 91/9 92/3 96/22 98/2 99/24 100/3 108/3 117/11 127/3 surface [25] 59/7 59/9 59/10 59/10 59/12 63/2 64/10 64/11 64/16 64/17 72/1 72/7 73/20 73/22 75/8 78/4 79/9 82/10 87/10 89/14 109/4 110/5 112/14 113/7 125/15 surfaces [8] 63/6 64/7 72/10 73/25 75/22 77/11 82/3 83/18 surprised [1] 140/11 Surrebuttal [2] 4/10 127/1 surrender [1] 140/4 Swap [1] 114/10 switch [5] 95/7 95/11 95/18 95/25 96/8 sworn [2] 6/20 46/13 synonymous [2] 29/15 103/5 system [23] 50/2 50/3 50/16 60/4 60/5 61/6 74/11 76/9 84/14 84/17 85/11 85/15 90/22 92/19 92/22 97/13 98/8 98/11</p>
--	---	--

<p>S system... [5] 103/11 109/13 110/11 113/14 123/9 systems [7] 85/14 96/21 96/23 97/1 97/15 98/5 112/23</p>	<p>100/24 technician [1] 51/12 technology [14] 9/1 12/14 12/21 14/6 31/22 32/3 32/5 32/7 32/22 34/15 34/18 47/16 49/9 50/6 Telephone [4] 1/17 1/21 1/24 2/7 tell [4] 13/15 15/24 46/22 83/13 temporarily [6] 74/11 75/23 76/3 76/9 81/8 115/22 temporary [1] 31/23 Ten [1] 119/18 tender [1] 52/11 tenth [1] 28/17 tenure [1] 9/10 term [7] 41/22 58/12 98/4 98/7 119/5 121/21 122/2 terms [4] 34/24 58/4 124/13 128/10 test [4] 21/9 56/18 56/22 132/18 testified [20] 13/20 14/1 17/12 33/2 33/4 33/8 34/9 57/3 57/12 62/16 66/19 70/4 83/7 101/17 102/4 107/17 117/17 118/11 127/4 131/12 testifies [1] 34/14 testify [7] 13/23 20/23 34/21 43/8 100/7 105/2 124/1 testifying [2] 14/2 84/20 testimony [21] 6/10 33/7 33/25 57/20 58/4 97/19 101/14 104/10 105/1 106/18 106/23 107/8 107/15 107/16 114/14 114/20 120/2 124/7 126/19 132/16 141/22</p>	<p>TEXAS [12] 1/2 1/7 3/3 138/24 144/17 144/23 144/24 144/25 145/2 145/14 146/18 146/20 Texas-wide [1] 144/24 text [1] 129/24 than [40] 6/10 11/21 15/2 15/15 22/25 28/18 32/4 35/13 36/13 37/4 37/25 38/1 39/1 41/25 42/1 42/3 43/23 44/4 44/6 44/25 45/2 53/7 79/2 94/6 96/8 96/12 96/20 111/25 119/13 123/12 127/15 130/1 131/2 133/9 138/3 138/6 138/23 143/13 143/21 143/24 Thank [30] 5/10 5/23 6/11 6/12 6/19 44/8 45/21 45/23 46/8 46/10 46/12 46/21 61/4 61/17 66/5 115/11 117/5 118/2 128/15 128/20 129/5 135/24 137/23 139/21 139/22 143/14 143/16 145/14 145/15 145/19 Thanks [1] 46/18 that [629] that's [110] 7/19 14/24 16/13 16/23 18/1 19/24 20/1 23/13 23/15 25/22 26/3 29/23 36/19 36/20 38/4 38/5 39/2 42/23 43/11 43/16 44/7 45/12 49/1 51/6 53/12 54/25 55/5 61/4 65/6 65/8 65/9 66/5 68/7 68/19 68/19 71/11 71/16 74/22 76/8 77/16 79/4 85/25 87/16 87/19 89/1 90/5 99/16 99/25 100/2 100/18 101/5 101/8 101/19 101/22 101/25 102/10 103/4 103/21 104/2</p>
<p>T Tac [6] 26/23 55/13 55/15 55/16 56/2 56/4 Tac-Con [6] 26/23 55/13 55/15 55/16 56/2 56/4 take [12] 12/5 20/22 23/3 56/25 65/9 65/11 98/17 98/19 113/10 117/6 124/10 145/16 taken [11] 60/13 61/10 61/12 61/20 61/21 68/25 75/11 79/25 80/2 80/3 89/11 takes [7] 37/18 55/4 55/10 71/7 91/7 109/9 136/19 taking [1] 10/6 talk [3] 58/25 111/17 129/1 talked [3] 84/15 88/21 112/25 talking [11] 20/25 28/9 87/1 110/12 118/22 121/19 121/20 122/1 122/4 128/10 136/12 Tampa [2] 9/11 9/13 tang [1] 125/6 tantamount [1] 121/1 taught [7] 9/21 10/4 12/12 12/18 12/21 33/24 50/5 teach [7] 7/19 8/6 9/20 11/1 11/5 11/9 85/9 teal [2] 62/8 69/25 teal-colored [1] 69/25 teal-ish [1] 62/8 technical [3] 47/7 48/4</p>		

<p>T that's... [51] 104/6 104/25 105/4 105/7 105/13 105/16 105/23 106/4 106/12 107/2 107/20 107/21 108/19 108/24 109/5 110/2 110/10 110/12 110/15 111/12 111/16 111/24 111/25 112/2 112/5 112/8 112/16 113/5 113/14 113/21 113/23 115/5 118/21 121/23 126/15 130/7 131/3 131/12 131/13 131/14 133/11 134/2 134/16 135/8 137/4 141/3 141/12 142/20 143/21 143/22 143/23 their [25] 8/7 9/4 11/2 11/6 12/23 30/4 34/12 34/19 62/19 72/5 77/7 83/4 90/18 98/16 99/21 99/21 104/1 106/19 106/24 116/16 118/16 119/19 133/25 140/4 140/15 them [13] 16/12 16/19 18/24 47/6 50/15 50/17 101/7 114/13 115/18 126/7 140/17 144/11 144/13 themselves [1] 99/18 then [94] 8/24 9/10 13/18 18/2 19/8 19/9 24/23 24/23 26/7 26/9 26/9 27/9 28/1 28/20 30/13 30/25 31/25 32/9 34/20 35/25 36/6 38/2 38/20 42/9 42/17 55/2 55/25 56/6 56/19 56/21 56/23 58/8 62/20 63/19 63/21 64/6 65/2 67/2 68/9 70/19 71/8 71/12 72/6 72/13 72/24 73/25 74/11 74/24 75/18 75/24 76/1 76/2 77/8 78/14 78/24</p>	<p>81/9 81/15 82/1 82/7 82/16 84/4 88/18 89/17 90/18 91/3 97/10 97/13 97/17 98/4 98/4 102/1 104/3 105/21 106/17 108/18 108/25 109/3 111/21 113/8 113/16 115/19 116/16 118/14 118/19 119/4 121/16 123/11 123/11 126/7 128/18 135/2 135/6 135/7 136/25 there [79] 7/3 7/10 8/25 16/15 18/12 19/10 19/15 24/10 25/5 26/13 26/25 31/23 31/24 31/25 33/19 33/20 38/7 38/25 41/9 44/20 44/24 45/12 48/16 49/21 49/23 50/12 55/9 56/2 57/3 58/21 62/13 62/14 65/21 69/21 69/23 70/10 70/12 71/3 73/21 74/19 76/19 80/17 94/14 94/16 96/11 97/13 100/3 104/13 104/16 104/19 106/8 107/6 107/15 107/16 109/7 109/15 113/1 113/11 114/1 115/1 119/6 119/21 123/6 123/23 124/5 125/10 126/1 126/18 131/8 132/3 132/6 133/17 134/18 135/18 139/3 139/4 144/13 145/3 145/9 there's [23] 12/3 14/12 16/9 16/19 17/17 25/5 26/22 42/6 60/3 61/5 70/23 77/14 79/16 80/18 80/23 101/1 116/3 119/4 121/21 122/19 129/19 132/2 132/4 therefore [1] 142/8 these [26] 23/15 25/23 27/20 28/9 48/24 49/4 50/7 61/10 61/12 61/20</p>	<p>61/21 66/2 66/7 66/10 67/12 67/13 69/1 117/6 119/8 119/9 129/1 133/18 137/15 140/2 144/11 145/7 they [73] 10/19 10/19 10/20 11/1 11/3 16/17 24/21 28/25 30/4 33/10 34/17 34/18 34/19 34/20 34/20 34/20 41/15 48/6 48/23 49/17 50/12 50/14 50/16 54/5 54/9 54/11 55/6 55/8 63/11 64/2 64/15 67/1 67/9 67/10 68/7 69/3 72/5 72/18 73/6 77/7 83/22 86/17 86/18 86/18 86/21 86/21 93/7 93/10 95/7 96/23 96/25 97/15 99/17 102/2 102/9 109/22 109/22 118/16 119/7 119/8 119/20 122/2 122/3 126/3 129/19 132/12 132/13 135/25 140/4 141/2 143/25 143/25 144/12 they're [6] 16/10 34/14 56/20 81/8 117/19 136/12 they've [1] 143/19 thing [23] 10/21 20/5 25/7 30/9 42/5 53/5 67/7 71/3 74/17 74/22 76/14 80/14 90/1 90/24 92/8 93/2 97/13 113/19 116/5 122/8 127/10 132/16 145/8 things [10] 10/19 16/13 38/3 49/20 50/7 50/14 53/13 70/23 131/8 144/11 think [21] 37/13 41/22 53/8 87/1 94/3 99/19 116/22 122/9 128/10 129/1 133/20 133/20 133/21 134/5 134/13 135/18 135/20 136/4 136/5</p>
---	--	---

<p>T</p> <p>think... [2] 136/20 136/21</p> <p>thinking [1] 134/13</p> <p>thinks [1] 119/3</p> <p>third [1] 144/9</p> <p>thirds [1] 9/14</p> <p>this [160]</p> <p>those [47] 7/16 11/22 12/6 13/1 14/1 16/7 25/25 26/17 33/3 33/8 33/8 33/24 36/3 47/7 48/5 48/10 48/14 51/22 53/20 54/14 56/14 56/24 57/8 57/9 59/12 64/7 73/25 75/22 81/10 83/18 88/24 89/1 89/3 95/16 96/3 96/21 104/8 116/13 117/10 119/19 122/19 134/23 134/24 139/13 140/16 145/11 146/13</p> <p>though [6] 25/5 100/1 109/11 123/16 137/8 137/15</p> <p>thought [1] 140/21</p> <p>thousands [2] 7/23 50/21</p> <p>threatening [1] 145/7</p> <p>three [17] 35/4 35/8 37/1 37/3 37/20 37/25 39/4 41/15 42/17 47/3 53/7 88/9 88/24 89/1 89/3 142/3 143/23</p> <p>threshold [3] 36/25 37/10 41/16</p> <p>threw [1] 106/7</p> <p>through [12] 12/24 23/3 23/10 36/3 50/1 60/6 60/21 67/13 68/14 79/18 87/2 90/7</p> <p>throughout [1] 58/4</p> <p>thrown [1] 121/2</p> <p>Thus [1] 40/13</p> <p>tie [6] 132/18 132/21 132/21 133/23 133/24</p>	<p>134/3</p> <p>ties [1] 143/4</p> <p>time [51] 8/21 9/3 14/19 24/2 24/16 26/19 28/21 31/16 32/24 44/8 55/4 55/6 70/3 81/3 88/6 89/13 92/22 94/23 95/12 95/15 96/2 98/7 98/16 99/3 103/12 105/7 107/20 108/7 109/15 109/19 110/13 112/24 116/8 118/5 118/9 118/17 119/15 119/22 122/22 122/23 123/8 123/18 126/12 128/2 128/16 128/19 128/22 128/24 139/20 143/13 145/18</p> <p>timed [1] 59/22</p> <p>timekeeping [1] 99/1</p> <p>times [24] 8/6 9/21 13/18 13/21 14/1 29/19 30/21 31/5 33/3 33/8 34/9 62/13 103/4 112/11 112/15 112/17 115/15 115/17 116/6 119/18 119/18 121/25 137/19 142/11</p> <p>timing [40] 54/11 54/16 55/19 56/2 57/4 57/10 59/18 60/3 70/5 70/8 71/15 71/19 81/2 81/4 81/12 81/14 89/5 89/7 92/16 97/14 110/11 115/21 115/24 116/4 117/17 117/21 117/22 117/24 118/4 118/7 118/14 118/15 118/17 120/25 121/3 123/6 128/22 131/21 131/23 132/9</p> <p>tiny [3] 28/9 28/12 28/14</p> <p>title [5] 12/23 33/14 34/5 34/7 39/12</p> <p>titled [1] 86/25</p> <p>Tobacco [3] 8/15 46/25</p>	<p>99/10</p> <p>today [18] 12/12 16/4 16/18 58/4 97/19 98/12 101/9 101/14 105/3 105/25 129/25 131/4 131/12 134/5 139/25 140/7 140/11 141/22</p> <p>today's [1] 105/14</p> <p>together [1] 28/10</p> <p>token [2] 28/6 28/13</p> <p>too [7] 18/11 32/11 35/19 47/13 84/16 100/25 134/24</p> <p>took [2] 50/16 56/14</p> <p>tools [1] 50/8</p> <p>top [24] 17/16 17/18 18/18 19/11 23/21 24/5 29/10 29/12 40/5 41/1 51/7 62/9 68/20 68/21 69/20 78/4 79/10 83/16 83/17 87/10 89/14 91/10 91/12 91/24</p> <p>topics [3] 9/5 47/24 48/2</p> <p>touch [1] 140/18</p> <p>touching [1] 30/17</p> <p>toward [1] 17/10</p> <p>towards [1] 73/11</p> <p>track [1] 29/16</p> <p>tradeoff [2] 19/10 19/13</p> <p>traditional [6] 22/2 22/15 40/23 40/24 41/5 107/2</p> <p>train [1] 7/22</p> <p>trained [3] 8/4 8/5 33/22</p> <p>trainees [1] 47/14</p> <p>training [18] 7/12 7/12 7/14 7/16 7/17 7/18 7/21 10/4 11/7 12/8 12/24 12/25 13/5 13/7 47/11 47/13 47/24 50/1</p> <p>transcribed [1] 146/10</p> <p>transcript [5] 1/11 57/20 57/24 146/5 146/12</p> <p>Transcript.....58 [1] 2/17</p>
---	---	---

<p>T</p> <p>transferred [1] 8/24</p> <p>trappers [1] 48/2</p> <p>travel [8] 63/2 63/14 63/17 63/22 72/23 75/7 82/5 83/10</p> <p>traveled [2] 21/7 31/24</p> <p>treated [1] 12/9</p> <p>trial [1] 128/4</p> <p>trigger [538]</p> <p>trigger's [2] 103/9 141/6</p> <p>triggers [14] 21/3 21/9 21/22 35/3 39/17 54/23 55/19 57/4 57/8 57/9 107/9 117/18 138/10 139/8</p> <p>trip [1] 89/13</p> <p>tripping [2] 123/12 123/13</p> <p>TRO [1] 138/4</p> <p>true [9] 35/3 43/11 85/25 99/9 102/19 112/5 131/8 132/13 146/5</p> <p>try [3] 23/9 106/22 122/2</p> <p>trying [3] 9/7 118/23 136/21</p> <p>turn [14] 17/5 36/21 39/21 60/24 63/4 63/21 64/8 68/16 72/13 72/24 82/7 83/12 114/14 145/8</p> <p>Turning [6] 53/11 56/11 65/20 74/24 86/24 87/22</p> <p>turns [2] 44/22 143/9</p> <p>Twenty [1] 65/23</p> <p>Twenty-one [1] 65/23</p> <p>two [32] 8/11 9/3 9/14 12/4 20/21 21/18 23/15 28/15 32/9 33/19 53/6 55/21 65/21 66/2 66/7 66/10 70/23 71/12 73/25 75/22 80/15 83/18 86/7 96/14 96/21 122/19 131/6 134/23 134/24 138/7 139/16 141/25</p>	<p>two notches [1] 23/15</p> <p>two ounces [1] 86/7</p> <p>two-inch [1] 28/15</p> <p>two-thirds [1] 9/14</p> <p>TX [1] 1/23</p> <p>type [23] 12/1 22/24 22/25 23/1 27/19 48/15 49/8 54/11 54/19 55/4 55/16 55/18 67/19 67/22 69/3 69/7 70/17 72/2 90/12 94/20 94/22 94/24 144/5</p> <p>types [4] 48/10 48/13 49/4 58/5</p> <p>typical [2] 29/11 50/4</p> <p>typically [6] 50/2 51/14 56/16 59/12 85/8 88/22</p> <hr/> <p>U</p> <p>U.S [4] 2/5 13/17 16/3 16/4</p> <p>U.S.'s [1] 135/22</p> <p>U.S.C [1] 129/11</p> <p>Uh [1] 136/13</p> <p>Uh-huh [1] 136/13</p> <p>unable [1] 110/6</p> <p>unambiguously [1] 143/9</p> <p>under [18] 15/22 17/19 18/3 19/20 23/17 24/3 33/14 47/14 48/8 63/3 72/11 82/5 117/12 121/8 129/11 135/21 140/13 145/16</p> <p>undercover [2] 8/23 9/4</p> <p>understand [2] 54/7 108/3</p> <p>understanding [1] 57/19</p> <p>Understood [1] 35/17</p> <p>undesirable [2] 89/2 89/4</p> <p>unfamiliar [2] 10/20 99/24</p> <p>unit [1] 60/17</p> <p>UNITED [8] 1/1 1/12 3/2 8/7 8/13 99/9 141/12 146/14</p>	<p>universally [1] 98/10</p> <p>unless [2] 36/3 133/13</p> <p>unlock [1] 118/8</p> <p>unlocking [2] 36/4 120/21</p> <p>unsafe [3] 110/15 110/18 132/8</p> <p>until [19] 23/19 24/7 32/8 44/18 44/19 55/10 60/2 74/9 76/10 81/6 92/17 118/5 118/9 118/14 121/3 130/15 130/24 131/20 132/24</p> <p>up [35] 18/16 27/7 29/4 30/5 30/8 30/8 30/8 31/24 34/15 46/2 46/4 48/19 60/25 61/3 61/8 66/12 66/13 66/23 75/25 76/19 78/23 80/1 88/16 90/8 98/19 104/13 111/13 117/16 118/1 119/24 124/14 124/22 124/23 124/25 134/24</p> <p>upon [9] 63/14 63/23 72/23 73/1 76/5 96/25 104/6 108/9 108/11</p> <p>upper [7] 61/5 61/16 65/23 65/24 75/1 79/21 82/8</p> <p>urge [1] 133/2</p> <p>us [13] 15/11 15/24 21/17 22/21 23/3 23/4 23/4 29/8 83/13 85/9 124/24 128/23 145/9</p> <p>use [18] 11/14 16/4 38/17 38/21 38/24 39/13 42/4 54/9 100/19 100/21 114/2 114/6 122/2 124/11 137/9 137/13 137/13 138/2</p> <p>used [10] 14/23 33/18 39/17 41/22 71/2 92/16 99/2 130/5 136/22 139/1</p> <p>user [59] 25/9 54/10 55/4 55/8 55/10 55/24 56/3</p>
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<p>U</p> <p>user... [52] 56/7 60/2 62/19 65/1 65/9 65/14 65/17 67/4 67/7 70/18 74/22 79/14 83/4 84/16 85/5 85/6 85/15 85/16 85/18 85/25 86/9 86/11 86/15 86/19 87/7 88/13 88/23 90/24 93/2 96/24 103/2 103/6 103/24 103/24 104/7 105/18 106/18 106/24 107/3 107/20 109/5 109/9 109/21 111/2 111/5 114/12 116/20 116/21 130/21 130/25 141/16 143/1</p> <p>user's [10] 45/19 84/6 84/15 84/18 85/12 85/20 85/23 87/21 105/20 111/11</p> <p>uses [7] 14/21 16/18 40/25 40/25 42/15 104/5 106/10</p> <p>using [18] 11/17 12/18 14/16 23/2 58/4 60/23 68/15 77/9 77/21 79/5 79/20 91/6 92/1 104/10 105/14 114/15 119/4 119/20</p> <p>usually [1] 49/18</p> <p>utilizes [1] 143/4</p>	<p>46/12 46/16 58/12 58/12 62/9 63/22 72/24 82/7 83/12 85/5 86/24 93/20 126/7 137/21 137/24 139/8</p> <p>via [1] 146/9</p> <p>video [25] 16/23 18/4 18/7 19/13 20/14 22/19 23/3 23/3 23/12 23/20 24/9 25/4 25/14 27/9 27/11 29/5 30/10 53/10 61/12 61/21 69/1 80/3 80/4 132/17 133/1</p> <p>Video.....29 [2] 2/12 2/14</p> <p>Video.....31 [1] 2/13</p> <p>videoconferencing [1] 146/10</p> <p>videos [2] 21/10 125/21</p> <p>view [2] 117/18 137/7</p> <p>views [2] 139/5 140/16</p> <p>violation [1] 34/7</p> <p>violations [1] 33/14</p> <p>virtually [1] 138/2</p> <p>visible [3] 17/24 23/13 125/6</p> <p>VOLUME [1] 1/11</p>	<p>WARRINGTON [2] 1/18 5/22</p> <p>was [81] 3/8 8/11 8/12 8/15 8/18 8/21 8/25 9/4 9/5 9/7 9/12 9/17 10/5 10/7 10/14 10/17 11/14 12/11 13/17 16/2 16/3 18/14 19/6 19/14 20/14 20/21 21/8 30/16 31/14 31/23 31/25 32/1 32/8 33/5 33/6 33/18 33/18 33/23 33/25 34/6 39/17 44/24 45/2 46/1 46/14 49/11 49/13 50/15 52/10 52/19 54/19 57/15 58/1 58/7 77/2 80/19 82/22 92/8 99/19 99/21 100/16 101/4 102/5 104/11 107/15 107/16 114/23 122/8 122/8 125/25 127/21 127/22 127/23 129/15 129/16 129/23 130/19 135/15 135/16 135/16 140/22</p> <p>Washington [1] 2/7</p> <p>wasn't [2] 34/1 100/1</p> <p>watch [2] 27/20 133/2</p> <p>watched [2] 20/14 80/3</p> <p>water [1] 42/13</p> <p>waters [2] 119/20 122/3</p> <p>way [31] 10/11 11/25 21/10 26/25 30/3 38/4 45/12 45/14 45/15 59/22 70/22 73/20 82/25 85/18 88/25 95/6 100/5 100/6 101/20 103/22 106/22 107/23 112/13 121/20 131/2 131/23 132/15 133/21 134/1 134/13 135/6</p> <p>ways [2] 123/13 131/6</p> <p>we [118] 5/5 6/6 7/15 7/19 7/20 10/4 10/18 16/14 16/17 16/20 16/20 17/7</p>
<p>V</p> <p>VA [1] 1/20</p> <p>vague [1] 122/2</p> <p>various [3] 47/20 47/25 117/18</p> <p>vented [2] 88/21 118/12</p> <p>verbally [1] 17/7</p> <p>version [3] 16/20 58/6 58/18</p> <p>very [32] 5/18 5/23 6/15 6/19 6/22 10/7 10/14 26/2 26/4 26/23 28/7 35/19 39/6 41/21 41/22 44/9</p>	<p>W</p> <p>wait [4] 19/21 23/9 23/19 26/8</p> <p>walk [5] 60/20 68/13 79/18 90/7 90/8</p> <p>want [13] 24/21 34/20 35/15 37/11 58/3 65/20 70/4 97/8 104/9 124/22 127/3 134/23 137/24</p> <p>wanted [4] 28/23 61/8 110/14 135/21</p> <p>wants [3] 24/23 62/15 126/2</p> <p>warrant [1] 10/18</p>	

<p>W we... [106] 18/12 18/21 19/17 19/22 19/22 20/1 20/14 23/4 23/9 23/11 23/19 24/10 24/17 24/25 24/25 25/6 27/7 27/8 27/9 29/4 29/7 29/9 29/16 30/20 31/9 31/15 35/1 36/3 40/19 50/7 50/7 53/13 53/14 54/23 55/19 56/16 56/16 56/17 56/19 56/21 58/3 58/4 61/16 61/22 63/4 63/21 64/8 66/3 68/16 72/13 72/24 75/7 75/10 75/12 76/18 77/11 80/3 82/21 84/15 87/1 88/4 88/20 90/12 98/17 98/18 98/25 100/21 102/15 103/25 110/12 112/25 113/10 113/10 117/3 117/9 119/21 121/19 121/20 122/1 122/1 125/3 127/25 128/7 128/7 128/21 132/16 132/17 132/25 133/21 135/19 135/20 137/9 137/13 137/13 138/8 139/7 140/7 140/7 140/11 141/17 141/18 143/20 143/21 145/17 145/17 145/19 we'll [1] 145/7 we're [14] 16/14 17/6 18/8 60/23 68/15 75/6 76/25 79/20 83/14 83/15 87/4 136/20 140/15 145/9 we've [15] 7/20 7/23 7/24 7/24 8/5 8/6 20/8 20/10 80/14 128/2 128/16 134/5 137/18 139/9 141/21 weapon [43] 53/25 54/1 54/13 62/15 62/18 64/19 64/24 65/15 65/18 66/14 66/25 68/3 70/3 71/22</p>	<p>76/8 76/13 77/6 77/13 81/3 81/6 81/22 88/6 88/10 88/17 89/20 90/4 92/16 93/12 93/15 94/5 97/3 108/21 111/4 114/23 114/24 115/4 115/17 115/20 116/8 125/1 127/13 130/15 141/10 weapon's [1] 41/1 weapons [11] 48/17 50/2 50/3 50/16 50/24 81/4 81/4 81/14 97/20 98/4 140/4 wearing [1] 146/9 Weatherford [1] 1/23 week [1] 31/23 weeks [2] 127/11 139/16 weight [10] 35/2 37/17 37/20 42/1 42/16 86/2 86/7 86/7 86/18 109/24 well [33] 5/22 7/17 8/21 10/4 10/25 11/19 13/11 14/12 15/13 23/8 26/18 28/13 28/23 29/8 30/20 36/1 47/12 48/1 53/14 65/7 73/14 74/7 84/2 88/24 98/17 99/19 100/4 106/17 106/22 110/17 120/11 122/11 136/16 went [3] 9/10 10/10 35/1 were [47] 8/19 10/4 10/19 11/13 12/9 12/9 12/13 12/18 12/18 19/17 22/21 29/1 31/21 32/12 32/21 33/3 33/9 33/10 49/2 50/12 50/12 52/17 53/20 54/16 54/23 55/19 78/11 87/1 88/10 95/23 101/6 101/24 102/2 102/5 102/9 104/10 105/24 110/12 114/5 114/11 115/14 116/11 138/23 140/7 140/11 141/2 146/10</p>	<p>what [174] what's [18] 77/16 97/12 58/5 58/16 63/12 69/24 70/2 70/16 72/20 75/4 75/20 78/20 83/9 83/25 91/22 101/3 122/20 141/19 whatever [4] 11/24 28/18 43/17 86/7 whatsoever [3] 56/2 60/4 67/10 wheel [1] 101/1 Wheeler [1] 144/4 when [64] 8/19 10/8 10/18 11/13 12/8 16/14 16/20 18/21 19/22 23/12 24/21 26/20 27/15 28/10 32/8 33/13 34/17 35/22 41/13 54/12 54/19 56/16 70/22 71/5 76/2 76/4 77/10 79/11 79/13 82/13 86/9 86/18 89/20 90/20 90/23 91/7 94/8 95/10 99/9 104/16 107/6 107/17 107/18 108/13 108/21 108/22 109/15 109/19 116/12 120/11 120/15 121/1 121/11 121/14 122/1 125/4 132/20 133/3 134/24 135/2 135/4 136/7 140/7 140/11 where [44] 6/25 11/1 17/17 19/6 19/17 22/18 24/15 33/18 33/23 33/24 37/9 61/10 61/20 62/1 62/4 62/7 62/10 68/24 69/24 70/13 71/21 73/22 77/4 79/24 80/8 80/11 83/18 90/14 92/17 94/17 99/25 104/2 105/6 105/7 109/12 112/1 114/20 115/18 117/16 121/5 123/9 139/3 140/24 145/4</p>
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<p>W</p> <p>where's [3] 69/13 69/16 69/18</p> <p>Whereas [6] 21/24 50/5 85/15 98/8 115/1 125/18</p> <p>wherever [1] 128/7</p> <p>whether [34] 9/7 9/17 10/2 10/21 11/4 11/5 11/14 12/7 12/21 25/21 34/2 34/10 34/19 49/2 54/2 55/5 58/22 67/16 69/6 95/13 95/17 96/16 102/16 104/3 105/20 105/21 106/10 107/21 113/23 116/3 117/18 129/25 135/18 143/12</p> <p>which [58] 7/19 9/14 11/20 15/1 15/15 15/22 17/8 18/16 20/17 21/8 22/23 23/24 24/2 24/17 36/21 42/11 43/15 43/18 47/19 47/22 53/6 54/9 55/7 59/2 59/6 60/1 60/25 62/16 63/2 82/16 82/22 82/25 83/6 84/4 84/5 87/5 88/17 89/5 89/8 91/2 94/5 94/14 96/12 103/9 107/16 111/3 124/6 124/19 125/1 125/6 129/16 130/19 132/2 132/8 132/14 134/19 134/20 140/21</p> <p>while [13] 8/25 40/11 40/14 40/24 53/10 66/8 112/20 121/8 125/11 139/17 139/19 142/7 143/20</p> <p>white [1] 17/25</p> <p>who [14] 5/7 7/22 12/18 12/20 12/20 12/24 49/16 99/12 135/16 140/1 144/4 144/10 144/23 145/12</p> <p>who's [1] 53/8</p> <p>whole [4] 18/24 25/22</p>	<p>101/2 117/22</p> <p>whose [1] 8/3</p> <p>why [18] 19/4 27/4 29/8 30/18 45/5 54/25 59/24 64/21 65/6 66/16 85/1 88/8 92/13 97/25 98/18 103/4 124/17 128/17</p> <p>wide [1] 144/24</p> <p>will [161]</p> <p>WILLIAMS [4] 3/2 146/4 146/17 146/17</p> <p>wish [3] 18/8 121/18 144/10</p> <p>within [4] 20/24 22/23 26/1 34/19</p> <p>without [12] 11/21 22/16 23/8 27/1 45/17 94/6 111/22 112/21 123/2 123/25 130/1 133/4</p> <p>witness [4] 6/1 39/7 119/22 128/9</p> <p>witnesses [3] 4/4 4/11 6/16</p> <p>won't [4] 36/6 65/16 110/1 140/17</p> <p>word [3] 4/17 104/19 106/3</p> <p>words [1] 136/22</p> <p>work [18] 11/2 11/17 31/21 31/25 32/12 32/22 40/13 42/6 45/15 50/19 50/22 50/24 52/2 56/21 58/14 133/18 133/21 134/1</p> <p>worked [1] 10/18</p> <p>working [1] 45/15</p> <p>workload [1] 34/15</p> <p>works [7] 57/1 69/4 100/24 101/1 107/10 108/12 141/18</p> <p>world [1] 51/8</p> <p>worse [1] 88/22</p> <p>WORTH [5] 1/3 1/7 3/3</p>	<p>146/19 146/20</p> <p>would [123] 6/2 6/7 6/20 10/11 10/19 10/20 10/20 13/20 20/3 20/16 20/22 21/12 25/7 31/17 33/21 34/22 35/13 36/7 36/9 36/15 37/2 37/6 37/8 37/9 37/11 37/16 38/2 41/21 42/5 42/5 42/9 42/13 42/19 42/19 43/7 44/14 45/2 46/13 46/16 50/10 50/17 50/20 53/12 54/8 56/4 56/5 56/5 56/8 56/10 56/25 60/20 62/19 64/24 65/1 67/1 68/5 68/7 68/9 68/13 72/5 76/17 78/8 78/17 79/18 83/2 88/12 88/13 90/7 94/16 94/19 96/15 99/21 99/22 100/3 100/5 101/23 102/11 104/3 105/24 105/25 106/1 106/2 106/2 106/17 110/3 110/15 113/12 113/12 113/16 113/17 113/20 114/12 116/22 117/3 117/9 118/12 124/10 124/19 128/17 132/8 133/1 134/4 136/14 138/1 138/7 138/8 138/17 138/22 139/12 139/14 144/1 144/5 144/6 144/7 144/9 144/12 144/17 144/18 144/20 144/22 145/8 145/11 145/12</p> <p>wouldn't [3] 45/12 99/14 99/22</p> <p>write [3] 32/24 99/14 100/15</p> <p>writer [1] 136/7</p> <p>writing [2] 101/2 105/25</p> <p>written [4] 47/22 100/25 101/7 114/1</p> <p>wrote [4] 39/10 39/15</p>
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W wrote... [2] 104/9 110/3	52/16 53/11 53/15 57/7 57/20 58/4 60/23 60/25	
X x-ray [1] 17/1	61/15 61/20 63/4 63/21 64/9 65/20 68/16 70/18 74/24 77/21 79/5 79/20	
Y		
yeah [10] 31/12 39/11 68/21 83/14 85/18 87/4 98/25 117/11 120/8 129/3	86/24 87/22 91/6 92/1 92/13 93/20 93/24 94/3 98/13 99/1 99/20 100/15 100/20 101/4 101/6 101/9	
year [1] 104/11	101/13 101/14 101/17	
years [16] 7/20 8/11 8/16 8/18 8/22 9/2 9/3 9/11 20/21 32/8 47/3 49/14 50/18 101/21 101/23 102/1	102/23 104/10 104/10 104/13 104/15 105/1 105/3 106/18 106/23 107/8 110/3 114/14 118/2 119/21 120/5	
yellow [3] 27/20 64/9 69/14	126/20 127/25 128/15 128/20 128/21 129/5 129/8 132/17 133/2 133/13	
yes [192]	133/20 136/4 136/10 137/7	
yet [3] 73/8 73/10 83/7	137/14 137/17 137/23	
York [3] 39/18 57/16 57/21	138/4 139/24 143/14 143/16	
you [467]	yours [2] 46/9 99/22	
you'd [1] 39/5	YouTube [1] 53/10	
you're [9] 37/14 38/3 42/12 44/5 101/9 107/9 108/3 116/24 128/17	Z	
you've [13] 8/4 14/1 14/19 25/13 33/19 42/9 42/10 44/21 101/17 119/19 126/18 129/25 130/3	Zip [6] 132/18 132/21 132/21 133/23 133/24 134/3 Zip-Tie [6] 132/18 132/21 132/21 133/23 133/24 134/3	
you-all [2] 124/14 124/23	ZOIE [4] 3/2 146/4 146/17	
young [2] 85/10 85/10	146/17	
your [122] 5/8 5/12 5/15 5/19 5/25 6/1 6/2 6/6 6/12 6/13 6/17 6/20 7/3 9/6 9/9 9/16 11/17 11/23 12/8 12/9 13/7 14/4 27/17 28/22 31/9 31/15 31/18 32/13 32/17 32/24 33/6 35/8 39/3 39/4 39/20 42/21 43/19 44/8 45/23 46/6 46/8 46/10 46/13 46/22 47/4 50/18 52/2	zwilliams.rmr [2] 3/4 146/21	